103

S. Hrg. 103–422

NATIONAL FLOOD INSURANCE REFORM ACT OF 1993—S. 1405

Y 4. B 22/3: S. HRG. 103-422

National Flood Insurance Reform Act...

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THE

SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

S. 1405

TO STRENGTHEN THE NATIONAL FLOOD INSURANCE PROGRAM AND TO REDUCE RISK TO THE NATIONAL FLOOD INSURANCE FUND BY INCREASING COMPLIANCE, PROVIDING INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT, PROVIDING FOR MITIGATION ASSISTANCE, AND FOR OTHER PURPOSES

SEPTEMBER 14 AND 15, 1993

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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CONTENTS

TUESDAY, SEPTEMBER 14, 1993

Page

Opening statement of Senator Kerry 1–74

Opening statements, comments, or prepared statements of:

  Senator Faircloth 2

  Senator Sarbanes 3

    Prepared statement 75

Proposed bill S. 1405 137

WITNESSES

James L. Witt, Director, Federal Emergency Management Agency 4

  Prepared statement 76

Dr. D. James Baker, Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, U.S. Department of Commerce 7

  Prepared statement 79

  Response to written questions from Senator Kerry 196

WEDNESDAY, SEPTEMBER 15, 1993

Opening statement of Senator Kerry 15

Opening statements, comments, or prepared statements of:

  Senator Mack 19

  Senator Bond 25

    Prepared statement 80

  Senator Moseley-Braun 49

WITNESSES

Judy England-Joseph, Director of Housing and Community Development Issues, GAO, Washington, DC; accompanied by Don Collins, Flood Insurance Administration, FEMA 15

  Prepared statement 82

    Actuarial soundness of the National Flood Insurance Fund 84

    Actuarial and subsidized rate setting 86

    NFIP's financial management system 86

    Lender compliance with the mandatory insurance purchase requirement 87

    NFIP's attempts to mitigate future flood damage 89

Peggy Bowker, chairperson, National Flood Determination Association, Reno, NV 30

  Prepared statement 90

Robert J. Engelstad, senior vice president for Mortgage and Lender Standards, Federal National Mortgage Association, Washington, DC 31

  Prepared statement 92

    General principles underlying Fannie Mae's underwriting 93

    Current statutory requirements 95

    Views on the National Flood Insurance Reform Act of 1993 96

    Summary 97

  Response to written questions from Senator Mack 204

Page

Michael K. Stamper, executive vice president for Risk Management, Federal Home Loan Mortgage Corporation, Washington, DC 34
  Prepared statement 98
    Flood insurance requirements for Freddie Mac seller/services 99
    S. 1405, The National Flood Insurance Reform Act of 1993 101
    Conclusion 103
  Response to written questions from Senator Mack 205
Kenneth L. Austin, Jr., vice chairman of Loan Administration Committee, Mortgage Bankers Association of America, Washington, DC 36
  Prepared statement 103
  Response to written questions from Senator Mack 204
Larry W. Palmer, Redland Insurance Company, Council Bluffs, IA 38
  Prepared statement 104
  Response to questions raised by Senator Mack 203
Thomas N. "Tommy" Thompson, first vice president, National Association of Home Builders, Washington, DC 50
  Prepared statement 110
    I. The Nationals Flood Insurance Program 110
    II. Proposed reforms to S. 1405 110
    Conclusion 112
Beth Millemann, executive director, Coastal Alliance, Washington, DC 58
  Prepared statement 112
    Hurricane Emily 114
    Flood insurance reform initiatives in the 102nd Congress 114
    The National Flood Insurance Program's failed mandate 114
    Yesterday's storms, tomorrow's hurricanes 115
    A taxpayer bail-out—again 116
    America's coasts: A threatened resource 116
    Enact S. 1405 and reform the NFI program 117
    Needed changes to the NFI program 118
    Recommended additions to S. 1405 121
    Conclusion 122
Kathleen M. McCauley, secretary, Marshfield Coastal Advisory Committee, Marshfield, MA 61
  Prepared statement 123
  Response to written questions from Senator Mack 206
Rebecca Quinn, legislative officer, Association of State Flood Plain Manager, Annapolis, MD 66
  Prepared statement 128
    Introduction 128
    Summary 129
    Background 130
    Conclusion 132
Cary Kehoe, Delaware Department of Natural Resources and Environmental Control, Dover, DE 68
  Prepared statement of Christopher A. G. Tulow 133
Pat Campbell-White, vice chairperson of the Public Policy Committee, National Association of Realtors, Washington, DC 69
  Prepared statement 135
    Introduction 135
    S. 1405 135
    Conclusion 136

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Transamerica Flood Hazard Certification, testimony of Thomas P. Della Torre, submitted on July 27, 1992 223
Dr. Peter M. Fallow, North Beach Civic Association, Vero Beach, FL 228
National Association of Professional Insurance Agents 231
C.M. Schauerte, Clearwater Beach Association, FL 235
Missouri State Senate, comments on floodplain policy, Senator Steve Ehlmann and Representative Joe Ortwerth 240
Clyde P. Angle, Jefferson City, MO, letter in support of S. 1405 243

Page
National Association of Home Builders 245
The Long Island Coastal Alliance 247
Town of Ocean City, MD 249
American Bankers Association 251
Flood Insurance Servicing Companies Association of America, Inc. 253
Bankers Insurance Group 258
Board of Governors of the Federal Reserve 263
Office of Thrift Supervision, Department of the Treasury 265
Federal Deposit Insurance Corporation 268
Gary W. Estes, citizen, public policy issue paper 270
National Credit Union Administration 289
ACSM, American Congress on Surveying and Mapping; ASPRS, American Society for Photogrammetry and Remote Sensing 293
National Wildlife Federation 298
Natural Hazards Research and Applications Information Center 298
Savings & Community Bankers of America 300
Coastal Advocate, Inc. 302

NATIONAL FLOOD INSURANCE REFORM ACT OF 1993—S. 1405

TUESDAY, SEPTEMBER 14, 1993

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, DC.

The committee met at 2 p.m., in room 538 of the Dirksen Senate Office Building, Senator John F. Kerry presiding.

OPENING STATEMENT OF SENATOR JOHN F. KERRY

Senator KERRY. This hearing of the Subcommittee on Housing and Urban Affairs will come to order.

I wish it were otherwise, but we seem to be presented with our own sort of Congressional disaster today, other than national disasters, and it certainly does not amount to that level, though for some, depending on what we vote on, it may well, but we have back-to-back votes, 13 of them, starting around 2:15 p.m. The first vote will be 15 minutes, and each subsequent vote is going to be 10 minutes, which means we have about 2 hours of 10-minute votes.

Obviously our capacity to conduct a hearing that is intelligible, let alone even physically able to conduct it, to get back here and ask one question and then race back is just going to be physically impossible. So we need to roll with the punch.

What I would like to do then, I just will curtail my own opening comments and take advantage of the presence of Mr. Witt who cannot be here tomorrow morning, I understand. We will just get his record testimony this morning, and I hope it is not going to cause tremendous inconvenience to others, but we would reconvene here tomorrow morning at 9 a.m. in order to try to minimize the interruptions.

Now I apologize. I know this is difficult. We just did not know, obviously, that that would be the agreement entered into late Friday afternoon; and we also did not know that there would be that many record votes required today. So I think it is probably a record of record votes, but I just do not know how to do it otherwise.

This issue of flood insurance is one that has been before us in this committee now for several years. I personally believe that the bill we have crafted represents a very fair balancing of the interests that have been presented over the course of these years.

We have tried to do our own mitigation, and I think we have succeeded in doing that. We have come up with a bill that balances the need to have sufficient enforcement mechanism and accountability in the taking out of insurance in order to have a fund that is sufficient to pay out, while at the same time meeting some of the other intended guidelines of the whole concept of national flood insurance.

Clearly when you have some 11 million homes in the floodplain, only 2.6 million of which are insured, we have a serious gap. Now, with the result of what has happened in the Midwest this summer, we are already in deficit in the fund and we do not even know the full extent of the damage. That is directly contrary to what the original flood insurance concept had in mind.

We have I think shown great and appropriate sensitivity to home owners and to real estate interests. I personally believe there is nothing in this legislation that drives down any value of any existing real estate. I do not believe there is any restraint on anybody's rights with respect to property. There is only a restraint on what the Federal Government will do to insure whatever decision or choice somebody decides to make, privately. And that is as it ought to be.

The Federal Government should not be in the business of providing low-cost insurance for known risks that do not encourage some other aspect of public policy.

Within the 30-year Erosion Zone, it is clear that, knowing the rate of erosion and knowing the incipient damage that will be incurred, there is no responsibility on the part of the Government to encourage new construction in those zones. We do hold harmless existing homes. So there is no taking. No property is put at jeopardy that exists today in these areas.

There is an effort in effect to try to say: Let's go forward from where we find ourselves and be responsible in the future from this point.

I think the balance between the effort to have a responsible accountability that is not overly burdensome on banks, not overly complex and regulatory, but at the same time effective, has been put forward in this legislation.

I think there is also a significant balancing, as there ought to be, of environmental interests with the need to try to be fair to those who hold current property, but to recognize that the Federal Government's responsibility for what they choose to do with it ought not to be endless or unlimited.

So those are the guidelines. Those are the big, broad, sweeping outlines of this piece of legislation which I think, if affected, will put the Fund on sound footing and will send a signal which is appropriate to home owners and others who build in floodplains or on beaches and storm-prone damage areas of how we ought to behave in the future.

Senator we are going to try—I am curtailing my own opening—we are going to try to get Mr. Witt's comments in before we have to go over and vote. Do you have an opening that you wish to make at this time?

OPENING STATEMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Well, I do.

I think the rates have been unusually low. As best I can tell, the whole program is broke. If it is not, I want someone to explain to me where it is not broke. The claims far exceed the amount of money on hand and the amount of money coming in. So certainly the premiums need to be adjusted to some realistic figure.

But, number two, if I were going back, the Federal Government never should have gotten into the business to begin with.

I look forward to taking some closer looks at it when we have some more time.

Thank you.

Senator KERRY. Thank you very much, Senator.

Senator Sarbanes.

OPENING COMMENTS BY SENATOR PAUL S. SARBANES

Senator SARBANES. I will be very brief.

First of all, I am very pleased to, as it were, turn over the hearing to Senator Kerry who has played such a very strong, positive, and constructive role in addressing this issue and has developed some legislation to be considered which I think has some very important modifications—important and positive modifications on how the program works.

Obviously we need to address this issue. It is not working well, and there is a tremendous exposure. There is inadequate money in the reserves and cash on hand, and it really raises—I mean, any rational person looking at it is obviously going to be concerned. We have a high potential of taxpayer liability. We have had a considerable noncompliance within the program that has weakened its stability.

The end result is that people who have really participated appropriately in the program may end up losing their protection because the program itself may be placed in jeopardy and the whole thing may be thrown back into a situation in which such protection is no longer available.

I think there is much in S. 1405 to recommend it.

Senator Kerry has worked hard and in a very sensitive way I think on the concerns that have been expressed in order to accommodate them. This measure encourages flood mitigation activities, provides incentives to communities to undertake flood control measures. It tries to address erosion provision so we do not simply see what is coming, and we just blindly go ahead anyhow.

There is a lot of common sense, frankly, in this bill, and there are a lot of ways in which the program has worked that does not reflect common sense.

Now we are going to have some very distinguished witnesses, and I hope to come back.

I do want to take just a moment to recognize Ms. Rebecca Quinn who is here representing the National Association of Flood Plain Managers.

She is the Flood Plain Manager from Maryland, and she has taken an active role at the national level to help shape the legislation, and she has been an effective manager of flood control programs in our State and a constructive voice in discussions with groups and individuals in Maryland who are interested in the flood program.

Again, I close by thanking Senator Kerry for the very extensive and hard work that he has put in in developing this very important piece of legislation.

Thank you, very much.

Senator KERRY. Thank you very much, Senator Sarbanes. I appreciate your help and support in it, and I thank you for those comments.

I would also personally like to thank Senator D'Amato who is not here right now, and his staff. This bill has taken tremendous leaps I think in its competency, and I appreciate Senator D'Amato's and his staff's contribution to this.

Line by line we have been working on it and trying to simplify it and clarify it, and I think we have come a long distance in doing that.

Dr. Jim Baker from NOAA is here, and we are delighted to welcome you.

Without further ado, let us go into Mr. James Witt's testimony so we can get as much in before we start this voting bonanza as we can.

STATEMENT OF JAMES LEE WITT, DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, WASHINGTON, DC

Mr. WITT. Thank you, Mr. Chairman.

Mr. Chairman, Members of the subcommittee, it is my pleasure to appear before you today to discuss the proposed changes to the National Flood Insurance Program.

I would request that my full statement be submitted for the record, and I will summarize its contents now.

Senator KERRY. Without objection, so ordered.

Mr. WITT. Today I would like to share with you my thoughts and goals as Director of FEMA, and to talk about some of our most recent experiences in responding to the Midwest flooding, and then to discuss the changes being considered to the flood program.

When I became Director of FEMA, I committed to Congress, to the President, and to the American people to rebuild and renew FEMA.

I served the people of Arkansas for over 16 years as a local official and as the State Emergency Services Director. I saw what emergency management can do, how it can help people in times of disaster and, more importantly, how it can work with people to avoid disasters.

I believe the mission of FEMA is simple: To reduce the loss of life and property from all types of hazards by providing the leadership and support for a comprehensive all-hazard emergency management program.

Senator KERRY. Mr. Witt, could I just ask you to pull the mike a little bit closer to you there?

Mr. WITT. Sure.

Senator KERRY. Thank you.

Mr. WITT. [continuing]—a comprehensive all-hazard emergency management program which includes mitigation, preparedness, response, and recovery. The cornerstone of this mission is mitigation.

I can think of no better way to serve people than to help them avoid becoming disaster victims. Building homes and schools that are better built and are sited out of harm's way will withstand disasters better. This means less personal and financial hardship and less tragedy. This also means less paying out of disaster assistance dollars by Federal, State, and local governments to rebuild our communities.

Right after I became Director of FEMA, I visited the area of Florida struck by Hurricane Andrew. I saw a community in which homes were constructed to meet building codes and virtually every home remained intact through Andrew. A few short blocks away, another community was not so lucky.

The heroic efforts of the people in the Midwest to save their homes from the rising flood waters provided inspiration to all of us, but it also provides vivid evidence of the problems we face when we insist on challenging the forces of nature by siting and building practices.

The opportunity is at hand to significantly reduce the number of people at risk from flooding in the affected areas. The time has come to make the hard political choices, and to make the long-term investment in mitigation.

We must begin to make mitigation worthwhile at the State and local level. We must provide the leadership, the expertise, and the support for mitigation to Governments, the private sector, and the individuals.

We are taking a major step in this direction through the new organization I am proposing for FEMA which was announced as part of the administration's National Performance Review.

We are establishing at FEMA a Directorate for Mitigation which will combine the three primary mitigation programs in FEMA. These are the National Earthquake Program, the Mitigation Grant Program under our Disaster Relief Program, and the Flood Plain Management Program of the National Flood Insurance Program.

By taking this step, we will provide a focus for working with State and local governments that will allow us to take advantage of the opportunities for implementing risk-based multihazard mitigation programs.

Clearly the cornerstone of the mitigation directorate will be the Flood Plain Management Programs of the NFIP. NFIP is one of the most effective mitigation programs in the Federal Government. But I believe even more must be done.

Mr. Chairman, we are very pleased with the vast majority of the bill's provisions. However, we do have some concerns. We are painfully aware that, despite the NFIP's effort in educating agents and lenders, each year only about 20 percent of those nationwide who should have coverage have actually purchased it. In the recent flooding disaster in the Midwest, that number may be as low as 10 percent.

The bill seeks to improve the insurance policy base by strengthening the requirements on lenders and those Federal agencies that insure or place mortgages in flood hazard areas to require flood insurance when extending mortgage funding. We strongly support this effort.

Without a significant increase in the policy base, the current policyholders will have to pay for the additional mitigation proposed, which will raise the premiums in excess of $50 per policy.

The bill omissions which will result in less than full compliance with the mandatory purchase provisions: For example, I am concerned because there is no mention of refinancing of home loans, or any provisions for review of existing mortgage portfolios. This would mean that portfolios of existing loans, even under federally regulated lenders, would still be at risk. This could expose U.S. taxpayers to demands for disaster assistance in the future.

Improved compliance with mandatory purchase alone will not guarantee that everyone at risk will be covered by flood insurance. There is a large, growing segment of the mortgage market that is not regulated by the Federal Government. Combined with those who have paid off their mortgages, this means that many structures will be outside the mandatory purchase provisions.

With the outstanding support of the Small Business Administration, FEMA staff recently reviewed approximately 2,000 applications for SBA loans arising from the Midwest floods. We found that over half of all applicants whose homes were located in the floodplain did not have mortgages. Of those who did have mortgages, about half were covered by flood insurance.

This means that no matter how effective our compliance rules for regulated lenders become, we still have a lot of work to do to educate the people about the flood risk. We enthusiastically support the provisions for mitigation insurance.

As we speak, community officials and their constituents are searching for ways to remove substantially damaged structures from the recent flood. This addition to the flood insurance coverages provided under the standard policy is critical to the success of their efforts in the future.

We are also concerned about the provision that would deny insurance in identified erosion-hazard areas.

We believe that the strength of the NFIP has always been in the agreement between the participating communities and the Federal Government that communities would enforce sound land-use management in exchange for flood insurance.

Actuarial premiums charged in erosion areas, coupled with a stronger mandatory purchase provision will help discourage unwise development.

While insurance denial may seem to be the simplest way to discourage development in these environmentally sensitive areas, we question how effective this really is. It is time to answer this question. Therefore, we seek your support for a short-term study to be done by FEMA along with NOAA that will examine the impacts of the denial of insurance, the application of actuarial rates on the development of Coastal Erosion Zones in coastal areas, and the requirement to purchase flood insurance at actuarial rates in these areas. This study could also look at prudent land use management strategies.

In closing, Mr. Chairman, I would like to say that each year the National Flood Insurance Program saves over $500 billion because communities have adopted and enforced Flood Plain Management requirements.

A recent study shows that 78 percent of potential development is steered away from the floodplains simply because of the program's minimum standards, and this is a good start.

I want to work closely with this committee, and I see your support as we move forward together to rebuild FEMA, to strengthen the NFIP, and to mitigate the risks being faced by our families and businesses and our communities.

Mr. Chairman, I am sorry that I will not be here tomorrow, but I will have Don Collins here, head of our Flood Insurance Administration for FIA, to answer questions that you may need answered.

Senator KERRY. Well thank you very much.

There are two areas of questions that arise out of that. What I would like to do is see if we can get Dr. Baker's testimony in, also, and then if you could stick around for a moment we will try to come back to you with some questions.

Dr. Baker.

STATEMENT OF DR. D. JAMES BAKER, UNDER SECRETARY FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Dr. BAKER. Thank you, Senator Kerry, other Members. I have a full statement for the record, and I will just briefly summarize that here.

Senator KERRY. Without objection, the full statement will be placed in the record.

Dr. BAKER. We believe that Senate Bill 1405 is a workable compromise that will yield significant improvements to the National Flood Insurance Program. We also believe the bill will provide a framework for a closer relationship between NOAA and the Federal Insurance Administration, and we strongly support it.

We support the Lender Compliance and other reforms designed to require property owners who are eligible for insurance coverage to purchase the coverage.

We support the authorization of the community rating system.

We support the authorization of the increased cost of construction coverage as a rider to existing insurance policies.

We also support the requirements that the Federal Emergency Management Agency map erosion hazard areas, and that erosion risk information be disclosed at the time of purchase.

I would add that NOAA is prepared to assist FEMA as it develops a coastal erosion mapping program.

We also support the Erosion and Flood Hazard Mitigation Fund and the requirement that communities wishing to receive funds develop risk management plans.

With respect to the denial of new Federal flood insurance in Erosion Hazard Areas, I would like to say that we agree with FEMA that a joint study should be conducted of charging actuarial rates and requiring the purchase of insurance at those rates, as well as the impact of a prohibition on insurance before a prohibition is imposed in legislation.

While these provisions further the goal of preventing coastal disasters, NOAA believes that the bill should go farther to address the heart of the coastal hazards' problem. We have two general observations on this subject which I will just briefly summarize.

First, we believe that FEMA, in consultation with NOAA and other interested agencies, should develop specific environmentally sound criteria for managing erosion risks. This will help communities to adopt the most effective measures to reduce threats from erosion, flooding, and storms.

Second, incentives for communities to adopt these criteria will be strengthened by providing funding for mitigation assistance. NOAA believes that mitigation assistance will help communities to make tough choices on flood and erosion risk management through land use controls.

NOAA has a major interest in coastal hazards management and flood insurance reform. The relationship between development in coastal areas and Coastal Hazards is at the core of NOAA's mission.

Through the administration of the Coastal Zone Management Act of 1972, NOAA supports State coastal management efforts to reduce risks from coastal hazards. We subscribe to the axiom that it is better and cheaper to avoid problems than to try to remedy them after the damage has been done.

The Coastal Zone Management Act created a voluntary Federal-State partnership to promote wise management of coastal resources. Under the Coastal Zone Management Act, NOAA provides funding and other assistance to the 29 States and island territories with approved coastal management programs.

Many coastal States and territories have adopted policies and programs designed to limit development in flood and erosion-prone areas. State efforts include comprehensive setback programs based on documented erosion rates, building codes specific to hazardous areas, post-disaster redevelopment plans, and planning activities that restrict development densities.

Among the most important factors in coastal development has been the National Flood Insurance Program. The purpose of the program is to use Federal flood insurance as a tool to promote sound floodplain management, as well as reduce flood losses and the Federal Government's disaster relief expenditures, a mandate that is fully consistent with the Coastal Zone Management Act.

State coastal programs often build upon these national standards in developing local or regional specific coastal hazard programs. At the same time, specialized standards developed by State coastal programs further reduce flood and erosion risks, thereby advancing insurance loss reduction objectives.

NOAA has a long-standing interest in flood insurance reform legislation. Since, the debate on reform in the last Congress, NOAA and the Federal Insurance Agency staff have worked together on a number of issues, including the development of erosion risk management criteria for the community rating system, and drawing on NOAA's coastal mapping expertise to develop a nationwide coastal erosion mapping program.

We look forward to continuing our cooperative relationship with the Federal Insurance Agency in the future.

To conclude, Mr. Chairman, we believe the Federal Government should discourage development in areas vulnerable to coastal and other natural hazards.

The bill before you is necessary, but it could go further. I urge the committee not to neglect the importance of land-use management in reducing damage from flooding and erosion, and to adopt the recommendations.

I should say also that we cooperate closely with FEMA. Judge Witt and I have agreed on this testimony, and we think there is great opportunity to support this legislation. Thank you.

Senator KERRY. Thank you both, very much.

I would like to, in the time that we have available before the vote, explore what I sense is your central two points of concern, Mr. Witt.

I want to thank you for the broader support of this bill which is important, and the same, Dr. Baker. Thank you for that and for the input of your people in the course of your effort which has been very important.

Mr. Witt, as I listened to your testimony there were really two concerns that I heard you most focused on.

The first is on the question of compliance where you are concerned that we might need more than is in this bill. Specifically you are concerned about some of the homes that do not have mortgages or which are not under Federal control, and I will come to that in a moment, because we have thought about it and I think where we are may be the best compromise we can get in this. But let me go to the other area, first.

The second area you expressed concern on is in the question of the denial of insurance in an erosion hazard area which you are opposed to. You are opposed to the denial of that insurance. Dr. Baker, you are in favor of the denial of the insurance. Correct?

Dr. BAKER. I think we agreed that this is an important topic that needs some study, and the two of us agreed last night that we would like to put together a small study group and look at the impacts of the denial. Let me come back to you on that.

Senator KERRY. Let me explore it with you a little bit to find out whether or not it is even in need of study, if I can.

We give Federal Flood Insurance because the private sector will not provide insurance in certain places where people have had to build homes, or might "have to build homes." Correct? I mean, the purpose of giving a federally supported insurance program is to provide for what the private sector can't. Because if it were at private sector rates, it would be too expensive for these citizens who "need to live there" to pay for it. Is that accurate?

Mr. WITT. Yes.

Senator KERRY. And since we are talking about taking taxpayer dollars from other taxpayers in America who do not live wherever it is, the flood zone, barrier reef, beach, whatever, we ought to examine pretty carefully why we are asking them to ante up some money.

Now if there is an area approximately and accurately designated as a 30-year erosion zone—i.e., within 30 years this land is going to disappear. It is going to be under water or a cliff gone.

What is the public policy rationale that we need to study to determine whether or not we should provide cheap insurance so that someone can build. And, if they want to build at risk—i.e., capitalize for $250,000, $500,000, and see it disappear, amortizing their 30 years of pleasant existence there, that is their business. The question before us is, should the Federal Government subsidize that risk?

Mr. WITT. If a person builds a home in a high-risk area, if they build to standards and codes under the flood insurance program, then they are going to have to build that structure to meet those standards and codes. Then they can buy insurance. If they build and the disaster hits that house, regardless if they build, then are we going to continue to give them disaster assistance?

Senator KERRY. In our legislation we specifically provide a disincentive for them to make a reckless decision, by asking them to assume the risk. In fact, they should be denied assistance if there has been a specific of Federal fund trends because it is within 03 zone.

In other words—I mean, this is again a public policy issue—I would like to know why your department believes it has an interest in having people in an area where either the flood insurance program will have the area, therefore premiums go up for everybody. Or, disaster assistance will be paid out.

I for one do not want to pay any more disaster assistance unless we have to. Also, I for one do not want to encourage development of an area that third-prong, has a high erosion, hazard area. I agree with you on that.

Why would you not support the bill, then, on that measure? Why would you not support denial of Federal flood insurance? It does not deny them actuarial rates' private insurance. They can buy it. They can build. They can get private insurance. But why would you as a Federal Government disaster official want to not prohibit federally supported insurance? Would not making them meet the standards and codes and identifying the erosion high-risk areas also be better than risk-management?

But the fact is that in order to build, they would still need a building permit, zoning requirements, et cetera. So they would still have to live up to the Code. They can't build without building to code. The question is: "Are we going to federally insure their building within a zone that we don't think they should build in?"

Mr. WITT. I just feel like that we need to look at both sides of it to make sure that if the denial will keep people from further building in an erosion high-hazard area, then—or would the requirement for them to meet the standards and codes and require them to purchase insurance to be able to build there, which one would be more effective for you?

Senator KERRY. Well, can you suggest to me why it would be effective to make cheap insurance available to them?

Mr. WITT. I do not think it would be cheap. It would be based on actuarial rates.

Senator KERRY. If it is based on an actuarial rate, then the private sector could handle it and the Government has no business doing it.

Dr. BAKER. Good point.

Senator KERRY. I mean, it is either cheaper, or it is what the private sector carries, there is no business for the Government to do it. Do you want to comment, Dr. Baker?

Dr. BAKER. No, Senator Kerry, just to say that Judge Witt suggested that this could be a short study, and it might be very short.

Senator KERRY. How short?

[Laughter.]

Dr. BAKER. I cannot comment on that, but we would like——

Senator KERRY. Do you think we could do this study before the markup in a couple of weeks?

Mr. WITT. Senator, if you request it we will.

Senator KERRY. Well, I would certainly encourage it. I am trying to find the rationale. I do not feel like I am picking on you. We talked about this in my office, so I do not feel like I am blindsiding you. I really cannot find the rationale. What we are here to do is to put this thing on a sound economic footing that is fair—and I want to underscore "fair."

No property currently insured loses insurance under this bill. No property that is going to be built back to code is going to be jeopardized. This is not in any way punitive.

If you want to go ahead and build and take a risk, go ahead and do it—if you can find a private insurer. All we are trying to do is limit the Federal Government's handout for something that we know is going to be a disaster at one point or another.

Now I want to emphasize that as we are about to break for this first vote. Let me just see if Senator Sarbanes has some questions before we break.

Senator SARBANES. Yes. I just wanted to ask Director Witt, what liabilities are you now exposed to under the Flood Insurance Program? How much?

Mr. WITT. At the current time, Senator, we have about—if we had to pay all the claims at this time, we would probably be $35 million in the red. Right now we have about $160 million in cash reserve.

Senator SARBANES. Well, how much do you have in outstanding liabilities? It must be in the hundreds of billions, is it not?

Mr. WITT. $243 billion.

Senator SARBANES. So you have outstanding liabilities. This nationwide, of $243 billion. And you have reserves of $160 million?

Mr. WITT. Yes.

Senator SARBANES. What do you think your reserve figure ought to be against $243 billion worth of liabilities?

Mr. WITT. What my insurance man said, that is just coverage. That is not liability.

Senator SARBANES. All right, coverage. What do you think your reserve figure against that amount of coverage ought to be?

Mr. COLLINS. Excuse me, sir. We are actuarially sound for the average historical loss year. As the Director indicated, that $243 billion of coverage is just that. It is not liability, Senator. If it were it would be as if all the liability insurance policies in the country——

Senator SARBANES. I understand that. Against that, you think $160 million is an adequate reserve?

Mr. COLLINS. We have enough reserve now to get through this fiscal year to October 1 without going in the red.

Now there comes a situation where we have a catastrophic hurricane for example, a Category IV, we will be paying those claims after October 1. It is possible, sir, that we would have to dip into the borrowing authority.

Senator SARBANES. How much borrowing authority do you have?

Mr. COLLINS. We have $1 billion, all-told, in two increments, $500 million each.

If we get into the borrowing authority, then the Director will work with the Congress and the OMB to see how that is paid back.

We have not used taxpayer money or borrowing authority since 1986. We have been paying all of our claims, my salary, all administrative costs for the average historical loss year out of policyholder premium surplus.

Last year, Senator, we went through about $800 million in loss payments from Hurricane Andrew on through the winter storms in the northeast. We had an awful year. We would be in much better shape had we not had that kind of unprecedented loss year.

Senator SARBANES. Except as I understand, NOAA has said that there has been a lull in this forum in the recent years. Is that correct? Historically? In terms of historical patterns, and you are getting more and more people moving into these areas, are you not?

Mr. COLLINS. Well, I think the demographics show that people tend to move toward the coastal areas.

Senator SARBANES. Who is going to pay this bill? I mean, we are facing the prospect potentially of a very large bill. Now obviously you do insurance and you do not cover it fully, but it seems to me this coverage seems to be pretty thin, isn't it?

Mr. COLLINS. Our statute was created by Congress in order that we should subsidize existing buildings. When a community comes into the program, they promise to elevate the new construction to the 100-year flood, which produces actuarially sound policies and rates. But the older homes are subsidized. Forty-eight percent of our business, by virtue of the statute are subsidized.

Senator KERRY. But if my colleague would yield for a moment, just two quick points.

No. 1, you do not have all the damage in, or the assessment in from what has happened in the Midwest.

Mr. COLLINS. No, sir. So far we have paid $24 million.

Senator KERRY. Correct. But you don't know what's yet to come, number one.

No. 2, there is significantly more mitigation and encouragement that you could offer to communities which would minimize your disaster assistance and your flood, if you had a larger fund that was capable of leveraging that mitigation. Correct?

Mr. COLLINS. Yes, sir.

Senator KERRY. And if you had a larger fund, ultimately you might yet be able to reduce rates more. Correct?

Mr. COLLINS. That would be ideal. That is the way the lender compliance provisions of S. 1405 comes in. If we can sell more policies, we can spread the risk and gain more premium income.

Senator SARBANES. Where does the money come from if you use up your $1 billion line of credit and people who have these policies are in trying to get their claims paid? Where does that money come from?

Mr. COLLINS. If we had to dip into the borrowing authority——

Senator KERRY. No, no. You used up your borrowing authority.

Mr. COLLINS. [continuing] and use it up, we would have to come to the Congress to consider what the Congress would want to do in a legislative ways.

Senator SARBANES. Well, you would be coming to us asserting that there were people who got the policies and paid the premiums, but you didn't have any money to pay the claim. Is that correct?

Mr. COLLINS. We would come to you asserting that, for example, in a 1 in 1,000 chance, the $4 billion storm. There is a 1 in 1,000 chance of that. If that were to occur, we would have to come to you and say, the borrowing authority may well be insufficient.

Senator SARBANES. So you would not assert that the Government in good conscience could deny those claims, do you, on the basis that it had used up the reserve, and had used up the borrowing authority? We obviously would be almost compelled to pay them, would we not?

Mr. COLLINS. We do not assert that, Senator, and we came to you early on to suggest we may have to do something about this. You can count on that, sir.

Senator KERRY. Folks, I truly apologize for those who have travelled any distance, and to everybody for your schedules, but we are going to have to now adjourn until tomorrow morning at 9 a.m., when we will resume the questioning.

Thank you.

[Whereupon, at 2:44 p.m., the hearing was recessed, to reconvene at 9:00 a.m., September 15, 1993.]

NATIONAL FLOOD INSURANCE REFORM ACT OF 1993—S. 1405

WEDNESDAY, SEPTEMBER 15, 1993

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, DC.

The committee met at 9:03 a.m., in room 538 of the Dirksen Senate Office Building, Senator John F. Kerry presiding.

OPENING STATEMENT OF SENATOR JOHN F. KERRY

Senator KERRY. The hearing will come to order.

At 9 o'clock, we test who the true believers are. I appreciate everybody putting up with the transition here, and apologize for the inconvenience. But I think you saw, yesterday, we would have had everybody just sitting around for a couple of hours, and I think this is a better way to proceed.

Why don't we just pick up right where we left off. We have Judy England-Joseph here representing GAO and Don Collins sitting in for James Lee Witt, so there'll be a few questions left, and then we'll proceed.

Do you have a statement that you want to make?

STATEMENT OF JUDY ENGLAND-JOSEPH, DIRECTOR OF HOUSING AND COMMUNITY DEVELOPMENT ISSUES, GAO

Ms. ENGLAND-JOSEPH. Yes, sir, I do. I have a full statement I'd like to submit for the record, and just have some summary remarks. And I do only represent GAO. My title includes looking at the housing and community development issues.

Senator KERRY. Understood.

Ms. ENGLAND-JOSEPH. And the gentleman to my left is from FEMA, but his last name is Collins.

I'm pleased to be here today, Mr. Chairman, to discuss the preliminary results of our ongoing work of the National Flood Insurance Program, as you requested, as you consider S. 1405, the National Flood Insurance Reform Act of 1993.

This work was requested by the former Chairman of the subcommittee as well as the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, and by yourself.

As you know, NFIP is administered by FEMA, the Federal Emergency Insurance Administration.

The December 1992 nor'easter, the March 1993 storm in Florida, and the Midwest flooding this summer have almost flooded, certainly have almost drained the NFIP fund. This has raised concerns by some Members of the Congress and the public about whether the NFIP, whose purposes include reducing Federal expenditures on disaster assistance, has sufficient financial resources to meet its current obligations and potential future payments resulting from flood damage claims made by property owners insured under the program.

Among other things, we were asked to review the actuarial soundness of the fund and the implication of eliminating its subsidized flood insurance rates, look at procedures used to set the program's flood insurance rates, and finally, the financial management problems addressed in FEMA's Office of Inspector General audits of the fund.

In summary, the NFIP fund is not nor is it required to be actuarially sound. This means that the NFIP fund may not have sufficient financial resources to meet future estimated losses. The fund is not actuarially sound primarily because Congress authorized insurance rates charged many policyholders to be subsidized without providing annual appropriations to fund the subsidy.

Modifying the fund to be actuarially sound by requiring subsidized property owners to pay actuarial rates may not minimize the Federal Government's overall expenditures on flood related disaster relief. The significant rate increase that would result from subsidized property owners if this change were made would likely lead some of them to cancel their flood insurance.

If policyholders with subsidized rates cancel their insurance policies, the Federal Government would likely face increased costs in the form of other Federal disaster relief assistance such as the FEMA's disaster assistance grants.

Whether the increased costs that would be incurred by other Federal disaster relief programs would be less than or more than the current subsidy cannot be estimated because the number of policyholders that would cancel their insurance is unknown.

Currently, 59 percent of the 2.5 million NFIP policyholders are charged actuarial rates based on actual risk exposures and risk-related features, such as the flood risk zone. However, for 41 percent of the policyholders in areas of high flood risk, FIA sets the subsidy rates based on the revenues needed to at least match the difference between NFIP's average historical loss year and the revenue expected from its policies with actuarial rates.

Subsidized policyholders currently pay greater premiums than policyholders paying actuarial rates, but average premiums would have to approximately triple to about $1,100 if FIA computed these rates on an actuarial basis.

If all 2.5 million policies had paid actuarial rates in fiscal year 1991, the fund would have received about $780 million more in premium income that year, or more than double the premium income actually collected.

While FEMA only estimated the dollar value of the subsidy for this one year, the fund would currently have a significant reserve if rates had never been subsidized and participation in the program had not been affected by higher rates.

Because of recent losses sustained by the fund, it may not have sufficient financial resources to meet future estimated losses, and the FIA may have to exercise its borrowing authority to pay those claims.

However, FEMA's IG identified serious problems in the NFIP's financial management system including the fact that the NFIP fund balance on deposit in the U.S. Treasury is commingled with all other FEMA funds into one balance, and therefore FIA has not reconciled its records with reported U.S. Treasury funds for many years.

FIA has not implemented the IG recommendation to establish a separate account, but it has acknowledged inaccuracies with the fund balance and is working to resolve those problems. Therefore, FIA's determination of when, and if, the fund needs to borrow may not be based on adequate data on the amount of funds on deposit with the U.S. Treasury. Because the financial condition of the fund has deteriorated, we believe that FIA should implement those recommendations to establish a separate fund.

We were also, Mr. Chairman, asked to look at lender compliance with the mandatory insurance purchase requirement, and also to address some issues dealing with mitigation. We are just beginning some of that work. We can speak to the work that we did in 1990 on compliance questions, and have some limited data as it relates to the nor'easter flood in New York and New Jersey.

But in conclusion, Mr. Chairman, our work does not contradict any of the things that I think you are proposing as a part of your bill. And in fact, I'd like to highlight a couple of things that we think are the most notable.

The one concern that we do have is that S. 1405, with increased compliance, could in fact increase the number of subsidized policyholders that would come into the program. If that were the case, they are riskier policyholders and therefore would create a greater risk to the fund, because if they are not paying actuarial rates. However, through compliance, if actuarial rate policyholders are brought into the fund, then in fact there would be no positive nor no negative effect on that fund.

The big problem, obviously, is those people who are not required to have flood insurance, those individuals who do no longer have mortgages and, in some cases, who have unregulated lenders. And I think the emphasis and priority that you're placing in S. 1405 on mitigation is one way of addressing that concern, and hopefully will help to prevent future losses.

Maps, issues dealing with erosion hazardous zones, all of those we think are a positive direction toward trying to improve the insurance program.

Senator KERRY. I really appreciate that testimony, and thank you for pointing out those last two issues.

On the final issue you mentioned, about the non-mortgage status, no Federal guarantee, you know, we've scratched our heads and that's the toughest one of all, I suppose. We obviously can't mandate that somebody have insurance if there's no mortgage and no Federal linkage, no nexus legally but perhaps we could do something about Federal assistance.

There was one amendment that was poised to come to the floor from Senator Brown of Colorado to the effect that we are not going to grant Federal assistance to people who haven't taken out flood insurance or storm damage, and so you take your risk. And that's one way because there is a Federal giveaway there.

We don't have that in here right now. It's something that may come on as an amendment. I'm going to talk to Senator Brown and we'll follow up on it. But that's a possibility.

On your other issue of the increase in the number of participants, I mean, obviously that happens, but on the other hand, today, there's nothing between them and the disaster, and we're providing Federal assistance. So we're losing money without at least putting it into a risk pool where you're spreading that risk.

I think when you look at the, while not strictly private sector actuarial basis, actuarials with respect to damage and potential payout, you're far better off having them participate in the fund, having a larger fund and having sufficient money to cover out.

Ms. ENGLAND-JOSEPH. Yes, sir.

Senator KERRY. It stands to reason that if we're only marginally below the level today at the current rate of storm damage, if you have many more participants, historically you're not going to have that much more storm damage.

So I think we'd have, you know, barring that disaster, a much more fiscally sound structure. But I think your study is helpful, and we certainly appreciate it.

I might say, for the record, there's one aspect of your study—there is a factual question about the basis of the study with respect to your non-mortgage findings and the whole question of Fannie Mae and Freddie Mac and what is required or not required. How much of the pool is non-mortgage and outside of the Federal flood insurance structure?

We up here disagreed with the basis of your conclusion as to that. In point of fact, most of those homes are mortgage subjected to federally supported institutions and most of those that are just mortgage-broker supported are still subject to Fannie Mae, Freddie Mac standards, and so you actually have a very small pool, according to our information, that are outside of any regulatory capacity, because they don't really have a mortgage.

Ms. ENGLAND-JOSEPH. Are you referring to the information we provided on the nor'easter, the New York and New Jersey, where we identified 6 percent of the pool?

Senator KERRY. Correct. I think you identified 200 homes out of a sample of 200 or something?

Ms. ENGLAND-JOSEPH. That are required to have insurance?

Senator KERRY. Right.

Ms. ENGLAND-JOSEPH. Right. And a substantial portion who do not have mortgages?

Senator KERRY. Correct.

Ms. ENGLAND-JOSEPH. And what we identified, sir, were 29 or about 6 percent of the total were with unregulated lenders. We are looking, based on conversations with your staff, more deeply at that, but many of those are privately held mortgages in the sense that they are family members or friends.

Senator KERRY. I totally understand, and that's true of a number of northeast homes, but the majority of your homes exposed without flood insurance are actually in the Midwest in the floodplain of the rivers. So actually, you know, by taking that sample, you don't wind up with a fair measure overall of the 11 million, only 2.4, 2.6 million of which are covered in that judgment.

Ms. ENGLAND-JOSEPH. Oh, yes, sir. And in no way did we intend, nor do I think we say in our statement that this is projectionable to the entire Nation at all.

Senator KERRY. OK. Fair enough. Good.

Let me, if I can just ask you, Mr. Collins, quickly, before turning to colleagues, I take it you would concur that there's a significant gap in compliance between what the current law requires and what lending institutions have actually undertaken or provided, is that correct?

Mr. COLLINS. Yes, sir, I will.

I mean the fact that there now exist some 70 or 80 private corporations who are helping lenders review their mortgage portfolios to determine whether, when they closed, they should have bought the insurance, but didn't, and then force placing flood insurance which should have been provided at the closing attests to the lack of compliance.

We're gratified by the numbers of lenders who are using these facilities. We wish more would. And perhaps the mortgage review portfolio program that was in your previous bill, would be worth considering sir.

Senator KERRY. That's something I know you mentioned, or Mr. Witt yesterday mentioned that he wishes there were a stronger lender compliance component here.

Mr. COLLINS. Yes, we do.

Senator KERRY. Obviously, in the effort to get support and to really get broad-based consensus on this, there's a balance, and we've tried to balance by not being too heavy-handed in the regulatory approach.

And I think that the escrow requirement, coupled with the 5-year certificate, is a decent balance between sort of the effort to get a longer-term solution but not have an overly burdened administrative, heavy-handed requirement on banks, that already have an awful lot of regulatory requirement, to adhere to.

Mr. COLLINS. We firmly support the escrow requirement. In addition, the provision on loan originations by non-federally regulated lenders, where they're purchased by Freddie Mac or Fannie Mae, we think that too is a very strong measure of compliance.

Senator KERRY. Good. Well, I'm glad to hear that.

Mr. COLLINS. And the community review, sir, of the new maps and the information the community will give to residents about the flood risk, that's excellent.

Senator KERRY. New mapping plus the community rating component ought to be helpful, I think.

Mr. COLLINS. Yes, sir.

Senator KERRY. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

I was sitting here making notes, as you all were discussing this. I guess the reason that this issue has always been of such interest to me is because I entered the banking business in the mid-1960's when flood insurance was making its way through the Congress.

As I was busily trying to take care of my relationship with my customers in the bank, I kept getting these fliers saying what was going to happen with national flood insurance and the role that banks would have to play in that. I kept saying, "oh, they would never require the banks to be the policemen to make sure there was insurance coverage." So I put the pamphlet off to the side, saying, "I'll get to it one of these days."

Of course, by the time I got to it, the Congress had already passed the original flood insurance bill, and sure enough, the banks were mandated to be the ones to, in essence, make sure that individuals had insurance.

I was intrigued by your comments a minute ago recording Senator Brown's suggestion that maybe we might consider mandating that the individual, the owner, be the party ultimately responsible for purchasing flood insurance.

The interesting thing is that this kind of a debate is currently going on about insurance with respect to health care. The question there is the same, "where do you place the mandate?" Do you place it on the employer or on the employee? With flood insurance, the question is whether the mandate should be on the banker or the homeowner.

Mr. COLLINS. Interestingly, if I may, Senator, in the Midwest flooding, we learned that 40 percent of the buildings that were flooded are not in special flood hazard areas, so flood insurance was not required.

Senator MACK. They're not in what?

Mr. COLLINS. They're not in special flood hazard areas, and those folks do not carry the insurance.

Senator MACK. Do you think that many of those people—of course the insurance was available to them anyway, wasn't it?

Mr. COLLINS. Yes, sir, it was available, and for a premium as low as $75.

Senator KERRY. But I think the point that Mr. Collins' making is that it wasn't in an identified flood hazard area.

Senator MACK. I understand.

Senator KERRY. Therefore, there would have been no——

Senator MACK. Even if you had mandated it, they wouldn't have had the insurance.

Senator KERRY. Correct. They wouldn't have had it.

Senator MACK. And either way, whether it was the bank or whether it was the owner.

Mr. COLLINS. That's right.

Senator MACK. Let me just pursue a couple of questions on the issue of compliance, just to put it in focus for me.

If all banks in fact were complying with what I understand the law to be, give me a sense of what additional revenue would come in.

How many more people would have insurance policies and how much more money would flow into the fund from these premiums?

Mr. COLLINS. Yes. We've done some marketing studies that indicate to us that there are as many as between 6 and 8 million structures in special flood hazard areas. We insure 1.8 million in special flood hazard areas in our book of business. Now that tells us, if you're looking at 6 million, that we have a 30 percent market penetration. Whereas, if you're looking at the 8 million figure, it's only 22.5 percent. So there's plenty of room there to sell this insurance and to get compliance. We feel that many of these have mortgages. We've looked into that too.

The property insurance industry's general, traditional point on this has been that about 70 percent of the policies bear a mortgagee interest on them. So applying 70 percent to our 1.8 million, then, assumably we should have like 1.3 million that have the coverage and the mortgagee interest.

Looking at those ratios, it suggests to me that—and we've done the math and we can submit an exhibit—there may be over 4 million properties out there with mortgagees in special flood hazard areas that don't have the insurance.

Senator MACK. Now tell me why the compliance has broken down then?

Again, I would just share with you my own personal experience, whether I liked the law or whether I didn't, once it was passed, we felt an obligation at the bank that I was employed at to see that anyone who borrowed, who mortgaged their property, that we loaned money on that was in a flood-prone area, we required that they in fact had insurance and we made every effort to try to—I mean, one of the difficulties is, what do you do after the second year, the third year, the fourth year, making sure that you have a policy that remains in force, and there are all kinds of things that can happen. But we made every effort that we could.

Frankly, when I heard the statistics, I was stunned at the lack of compliance. And I would be interested if you could share with me why that has occurred, and is there more to this than just focusing in on the banks?

Mr. COLLINS. We ought to. And I think some of what I say may be anecdotal. Also, I think Senator Kerry's bill addresses a lot of the secondary market problems we deal with.

We've had, for example, a loophole in the secondary market purchase arena since 1973, when the Flood Protection Act of 1973 was passed. And the Act didn't cover the purchase of loans by banks, and under our statute, it is still possible for non-federally regulated lenders—I'm talking about mortgage bankers now and not when they're making a VA guarantee or an FHA insured loan, but when they're making a conventional loan—to close that loan and not require flood insurance.

It then is possible for a commercial bank, regulated by a Federal financial instrumentality, to purchase bulk assignments of loans from these mortgage lenders. And I did it in another life in New York for some New York banks, and they buy them in bulk, and plenty of them, and they don't have to get flood insurance, because the loan was not made initially by a federally related lender. There's some of that out there.

Senator MACK. That's not a major portion of the lack of compliance, though, is it?

Mr. COLLINS. Well there's growing activity, we note, on the mortgage banker end of things. They're closing more loans. No, I can't honestly say that I know how significant it is, the bulk purchases by the commercial banks, but that is there.

Another thing, I guess, is that it added a new complexity to the banking business, and those folks had to possibly create insurance departments where they didn't have them before, and I guess it's been slow starting.

Senator MACK. But most banks had insurance departments in the sense that they had to have insurance follow-up on hazard insurance for the home. They had to have insurance for automobiles that they had financed.

Mr. COLLINS. Yes, sir.

Senator MACK. So there was basically——

Mr. COLLINS. Often it is serviced, though, is it not?

Senator MACK. Pardon?

Mr. COLLINS. Often it is serviced by——

Senator MACK. It's escrowed directly into the payments.

Mr. COLLINS. No, I mean the servicing of the insurance is often done by the very mortgage banker who closed the loans initially. That happens too. It's a complex issue.

I had a president of a bank in New York, who I know very well, tell me 6 or 7 years ago, "Don, your program's a pain in the neck with its paper work." This is a business view and I understand that. I think, though, we all need to be more aggressive in seeking compliance and the bill goes a long way toward helping us do that.

I would like, when a disaster assistance loan is made, or a grant, I'd like to work in tandem with those agencies, and I would recommend this to the director, that we work with them to try to find out whether or not that property owner had a mortgage and had insurance. And if he didn't have flood insurance, then, I guess, when you get to that bank and say, how about force placing this one, the bank has an opportunity to obtain the insurance.

Under your bill, the bank gives notice to the borrower and 60 days later, if the person doesn't buy the insurance, it can be force placed. I think we can work in tandem with the disaster agencies and get compliance that way, as well.

We need to do a lot of work in this area.

Ms. ENGLAND-JOSEPH. Excuse me. Something else you might be trying to get at, sir, is that a number of banks, I think, are concerned by the quality of maps. I think we frequently have heard the ability to determine whether a property is in a special flood hazard area is often difficult. Maps may not be updated, or if they are accurate, may be very, very difficult to read.

And so the work that we did in 1990 demonstrated that there were a number of times where that may have been one of the root cause problems with the bank not being able to really officially and accurately determine that an individual needed to have insurance.

Senator MACK. And how is that being addressed now?

Ms. ENGLAND-JOSEPH. Well, the quality of maps is something that's often been debated and it's part of this bill, as well.

Senator MACK. I only have one more question.

Mr. COLLINS. Also, could I—I don't mean to be a butt-in-ski, Senator, but I think this is important.

Ms. England-Joseph makes a very good point. That's the very reason that whole industry of mortgage portfolio review companies has sprung up. They're reading those maps with community maps and telling the banks whether or not they made an error. This is very helpful, that portfolio review. That's excellent.

Senator MACK. I only have one more question at this point. It goes back to the comments that Ms. England-Joseph made with respect to FEMA's records and the commingling of funds and, in essence, what I drew from your comment would be that it would be difficult for the borrowing to take place because the financial records really are not of the quality that would allow the borrowing.

Now that's the first part of what I drew. And, well, let me get you to respond to that, and then I'll take it from there.

Ms. ENGLAND-JOSEPH. No, I don't think borrowing would be difficult because they have a bottom line that they can demonstrate that they may be under or over, whether they're over obligated and therefore needing to borrow from the U.S. Treasury.

Our concern is that they never really know when they are there. They actually may be there now. But because they are commingled with other FEMA accounts, they could be using other FEMA money for other programs, that the Congress appropriated for other programs. And so——

Senator MACK. Did I draw from that—it sounds to me that they're operating under some kind of a cash basis?

Ms. ENGLAND-JOSEPH. Yes.

Senator MACK. Is that right?

Ms. ENGLAND-JOSEPH. Because they are not separately accounted for, no one really knows exactly how much money is in that account. I mean there is no account for that.

Senator MACK. Is there any disagreement about that? I mean, that's incredible.

Well the other question related to it then was, again about mitigation.

I was under the assumption that there was some kind of financial problems. As you just indicated, they may in fact be at the point where they need to borrow, but they don't know it now. What impact does the mitigation, the new aspect of the program to provide dollars for mitigation, how does that affect the underlying financial viability of the fund?

Ms. ENGLAND-JOSEPH. I think we need to separate those.

First, FEMA needs to get their accounting system, their financial management system——

Senator MACK. Let me be more specific then. What we're talking about here is a fund that apparently is already in trouble. You're raising points about subsidizing and the lack of compliance. And now it sounds like we're going to be adding an additional operation of the fund, and that is for mitigation. And my question to you: Does that add to the question of the viability of the fund?

Ms. ENGLAND-JOSEPH. It certainly could at any given point in time, but I think what—you mentioned earlier, they're treating it as a cash, almost as a cash flow process—and they are constantly taking premiums in, and they are obviously making obligations based on claims.

They can time the claims pay out to make sure that they have money coming in, in terms of the premiums. But in essence, they have no real reserve in order to be able to pay for everything they know that they've got in terms of obligations if they are not getting the premiums in to actually cover those costs.

Mr. COLLINS. May I address that, sir? I'd appreciate a moment on that.

Yes, our outstanding obligations now are probably somewhere in the neighborhood of $200 million if we had to pay everything all at once. We have a $35 million negative balance. But it is a cash flow situation. We are taking in $50–$60 million a month. We will get through this Midwest flooding without, you know, dipping into the borrowing authority.

But on the borrowing authority, I have to say that, even if we do—and we haven't done so since 1986—this is the way the program was set up by the Congress. Subsidized rates since 1978 until now have given us a deficit of some $667 million where the postfirm actuarially rated business has given us a surplus of about $250 million.

The other thought is that, in real terms—and Senator Kerry, with your permission, I have an exhibit I'd like to submit—we have calculated that new construction built since 1975, when our postfirm building elevation requirements that communities adopt, really took hold, probably 2 million building permits have been issued in participating communities. These are elevated buildings.

We have compared the damages, based on our loss data, between the older buildings that were there, subsidized, that we have to insure under the statute, and the newer buildings that were built to code, and we're finding that, based on $110,000 worth of coverage (building and contents), the difference, the disparity between dollars of damage is $291 more in the case of the older buildings as compared to the newer buildings.

Now, we took the building permits that were issued during that time, and it's about 2 million permits in special flood hazard areas that have been issued, and we did a calculation. And we came up with a real, not an imagined (and the exhibit is a practical exhibit and a practical answer) savings per annum, at this time of $569 million.

So I'm saying, if we have to go into the fund, that is, the borrowing authority part of the fund, and it has a 5–10 percent chance it could happen, what's wrong with saving some money? Obviously a rhetorical question.

Take 10 years starting now, for example, and it's $5.6 billion, we can save due to new construction. And we've shown that new construction has a 1 in 4 chance of sustaining damage where the older buildings have a 4 to 1 chance of sustaining damage. We've shown that $6 go out for the old for every $1 that goes out for the new. The program is working.

I'll go back to Congressman Keith, Senator Kerry, of Barnstable, MA, when this program came into being in 1968, and somebody asked Congressman Keith, why do we want this program?

And he said, "we want this program so that when people who are beset by tidal waves and riverine flooding, they won't have to go and get disaster assistance and they won't have to go and get loans, and we'll get floodplain management to elevate structures." This is what we're saying, and it's working on the floodplain management side. Surely billions are saved.

And on disaster assistance, in Hurricane Hugo, of the $1.1 billion of Federal expenditures, 35 percent of that was flood insurance claim payments paid by premiums, not taxpayers.

The program makes sense. Why not collect a premium and save money, is what I'm saying.

Senator KERRY. I appreciate that good explanation of the program. I might point out, also, that the mitigation component through the grants represents about 5 or 6 days of premiums, of the income of the premiums. And obviously, if there's more compliance, then that percentage of the total amount of money collected goes down in terms of mitigation. Or you could increase the mitigation, and reduce the damage, correct?

Mr. COLLINS. Yes, sir.

Senator KERRY. And reduce the rates paid by the ratepayers but, in effect, have much less payout to the taxpayer ultimately. I mean it's a savings.

Mr. COLLINS. Oh, yes. And Senator, we will be raising the rates for the mitigation insurance. I mean, a $409 rate in a subsidized policy in an erosion zone, just for the mitigation insurance, that may go to $750. Post-firm and V-zones may go to as much as $1,500. And that is just for the mitigation insurance.

Now, when we identify the erosion zones, the rates will be adjusted for those zones. And, as you pointed out in your questions and answers, sir, it's conceivable that a $100,000 building in a 10-year zone might see a $10,000 a year rate.

We'll have to look at that. We'll be adjusting for the mortgage insurance—the mitigation insurance, excuse me, and also for the erosion zone. So we try to run it as fiscally sound as we can. We'll be consulting, of course, with you and this committee on these changes.

Senator MACK. Let's see if I can think this through. If you increase mitigation and you reduce premium, isn't that kind of a zero sum gain? Why is the fund better off because——

Senator KERRY. Well, you wouldn't do it unless—and you'd have to wait and see what your total amount of money is. I'm just saying that, exponentially, you have that possibility.

Mr. COLLINS. It's part of the risk, Senator.

Senator KERRY. Senator Bond.

Mr. COLLINS. The more policies we sell, the more premiums we have. And if people are buying higher coverage, which is in this bill, and we firmly support that, we'll have more premiums with which to pay losses. These elements are all covered by the bill, and I think they're very sound.

Senator KERRY. Senator Bond.

OPENING COMMENTS BY SENATOR CHRISTOPHER S. BOND

Senator BOND. Mr. Chairman, I thank you very much for holding this hearing. I apologize that I unfortunately have a number of things going on today, but there's nothing more important to us in Missouri than discussing the implications of flooding and flood insurance.

As you all are quite well aware, or were aware when it was on the nightly news on every television station around the country, we had floods that were not just your average run-of-the-mill 100-year floods.

I was Governor of Missouri in 1973, and we had a 100-year flood, and I thought that was devastating.

This year we had what we would say, not officially but maybe there's official justification, is a 500-year flood because this was a flood that hit people in areas that had never flooded before in memory. People were flooded who correctly believed that they were above the special flood hazard area.

This has caused a tremendous problem in our State. Obviously, we're looking at those homes, maybe 15–16,000, maybe 20,000 homes that were flooded, many buildings, and businesses.

We recognize, of course, that people living in the floodplain should have responsibility for taking steps to protect their residences from, or their buildings from flooding. And we know, also, that they ought to be carrying insurance.

Enhancing compliance would help spread the risk and place the National Flood Insurance Program on a sound footing.

I support making changes in the way we provide insurance, who gets it, and how flood coverage is granted.

Mr. Chairman, I would like to introduce into the record a very thoughtful letter from two good friends of mine, a State Senator and a State representative from St. Charles, Missouri, and they outline the real quandaries people find themselves in.

They make a good point, in this letter, that when you're dealing with people who have been flooded out every 3 or 4 years, you expect that they should be on notice by now that they're living in the floodplain. But for people who have been hit for the very first time, and their homes were behind 100-year levies, or they were above the 100-year floodplain, these people are completely at loss as to what to do. And there are some very tricky questions that arise from that.

I also would ask your unanimous consent to include in the record a letter from an attorney in Jefferson City, Missouri, who makes further comments about flood insurance, because that community, our capital city, was marooned. When the waters went down, it looked like an earthquake had devastated the roads, the small community north of the river had been totally wiped out.

Senator KERRY. Without objection.

Senator BOND. And I'd ask, also, that the remainder of my comments be made a part of the record.

But it's the human devastation I do want to emphasize is far beyond what anybody could imagine unless you've been there. Television pictures are interesting to see how broad the river is. It's not until you go back into those buildings to try to clean them out, and you're wading in 3 feet of mud, and you open a cabinet door and a snake crawls out because that's been the best habitat that the snake can find, that you appreciate what some of these people are going through.

We have raised before with FEMA and with HUD the problems that we have securing intermediate term housing, because we've got a continuing problem there.

But I want to raise with you two, for your comments, some of the quandaries that we're facing. Many people in Missouri who were located behind the 100-year flood levies, or in the 100- to 500-year flood boundaries, or beyond the 500-year flood boundaries were not required to have flood insurance, but many of these people were still damaged by the flood.

Now they need to figure out where to turn for assistance. And furthermore, assuming that the levies would be rebuilt to the 100-year flood level, and we've lost close to 1,000 levies in Missouri. The Corps of Engineers and the SCS is committed to only restoring maybe 200 to 300 of them.

Six hundred of the 100-year levies are going to have to be restored to protect homes and residences by other means, by local means, if the levies are rebuilt. And the people behind them have had more than 50 percent damage. Will they have to elevate their homes?

Another question arises if there are barns. A story was going around that you'd have to put barns on stilts. That's great if you've got cows that can climb ladders.

[Laughter.]

But having barns on stilts is causing some people some confusion. And, you know, that is also in the material I'm going to submit.

And the final question is, what if the levies are not rebuilt, what kind of temporary coverage can we give them?

Now I'm going to submit this in writing, because I don't understand the question very well, myself, it's so complex, and I'm dying to hear your answers.

Mr. COLLINS. Well, I can comment briefly and will provide them formally.

Senator BOND. Please.

Mr. COLLINS. The Director and I were talking. He brought up the subject of the barns too. He's from Arkansas and he's fully conversant with barns. And that was the same thing he brought to my attention. "Don, how do these folks get their animals into an elevated barn," and I said, "Director, you're right on the money with that important question." We're looking at that problem.

In terms of elevating buildings on the other side of levies where they are not in the 100-year floodplain, OK, they wouldn't be required to be elevated, because they're not in the special flood hazard area by definition.

In terms of how valid are these levies and should we be looking at those floodplains, which absent a levy are the 100-year floodplains, with a view toward some kind of insurance rating system where they would have to get insurance, the National Academy of Science has made a recommendation to us, which we are studying, on whether or not there ought to be a new zone introduced for just that problem. Also, FEMA is looking at the levy restoration problem right now.

Senator KERRY. I might add that that is not required in this bill.

Mr. COLLINS. Sir?

Senator KERRY. That is not required in this bill.

Mr. COLLINS. No, it is not.

Senator KERRY. That's all I want to make clear.

Mr. COLLINS. If I may, Senator Kerry, later on, we'd like to submit, for the record, some of the accounting positions we have in relation to the GAO's testimony.

Senator KERRY. Absolutely. The record will remain open for 1 week for questions being submitted in writing, and answers to be provided. But we're staying on a fairly tight schedule here, so it will be 1 week.

Mr. COLLINS. Can I give you another thought from Mr. Witt?

Senator KERRY. Yes, sir.

Senator do you have anything else?

Senator BOND. Well, I think this is, Mr. Chairman, this is such a quandary I would like to submit this for the record, and ask that FEMA consider it and respond to it. Obviously, it's a several part question. And rather than try to unravel it all here——

Senator KERRY. I understand.

Senator BOND. [continuing] I'd rather they have the chance to think about it because it's very confusing to us even to ask the question. So I will submit my statement and these letters. And I would ask if the FEMA people can have a copy of these records, or we will make them available to you so you can get a flavor of some of the problems they're facing, and also we'll submit these questions.

Senator KERRY. Absolutely.

Senator BOND. Thank you very much, Mr. Chairman.

Senator KERRY. Without objection, the statement and the letters will be made a part of the record and the questions are considered submitted to you, as of today. So we would look for answers to those within that time period that I described.

Mr. COLLINS. We'll get right on it.

Senator KERRY. Thank you, Senator Bond.

Senator MACK. Mr. Chairman.

Senator KERRY. Senator Mack.

Senator MACK. There was one other area that came to my attention, and maybe we can do this in the sense of submitting the questions for a written response. But it has to do with the erosion area, and at least with the information that I have, the question kind of comes this way.

If we haven't even come close to a net loss of $25 million in erosion-related losses over the course of, say, the last 10 years, why are we going to spend this much and more to investigate the risk than the risk itself is likely to cost the fund?

Mr. COLLINS. The problem here is, Senator, we think we've lost a lot more in erosion-related losses than we can document. We have not identified the erosion zone in a technical mapping sense. And that's why this bill is very useful, because it will have us do the erosion zone identification.

We have a lot of buildings, for example, on the North Carolina coast that are battered by winter storms, and up in New England and New York. And part of that damage is erosion, part of it is flood loss. All that goes into our system as flood loss, because we have not identified the erosion zones.

So I have to submit to you, respectfully, sir, that we think the damage is a whole lot more than that $25 million, and we really need to get into the study to see where we stand on that.

Senator MACK. OK. We'll submit some of our data along with the questions to you.

Mr. COLLINS. Thank you, Senator.

Senator KERRY. Thank you very much.

Let me just point out, in today's Washington Post, from testimony yesterday before a House Science Subcommittee, the National Weather Service points out, in fact, Robert Sheets, Director of the National Hurricane Center, said that 20 years of mild hurricane seasons may be ending with a return to the more frequent and severe storms of the 1940's and the 1950's. And that has been predicted now for a number of years.

So, again, coupled with the changing weather patterns that we seem to be perceiving that have clearly altered summer and rainfall and so forth, this becomes a little bit more pressing, I think.

Mr. COLLINS. Yes, sir.

Senator KERRY. Folks, thank you very much for your testimony. Yes?

Mr. COLLINS. I beg your indulgence.

Mr. Witt, last night, he was reflecting on your question, yesterday about, why do we need the study of the denial of flood insurance in the erosion areas.

The administration and Mr. Witt strongly support Senate Bill 1405 and the Director does not want anything to impede its progress. And thinking that the study might, he would like to withdraw the suggestion that there be a study.

Senator KERRY. Oh, I appreciate that. That's very helpful, and I think that clarification is important, so thank you.

Mr. COLLINS. And I do have to say this, sir, and very respectfully. That the administration and Mr. Witt still cannot support the insurance denial provision in the bill. The reason for that is as we discussed yesterday, when we got into the thought that we'll have actuarially rated properties and that is really how we do business.

But more importantly, the feeling is that it might be seen as a repudiation by FEMA, by the Federal Government, of the agreements that communities have entered into in exchange for the provision of flood insurance; namely, to do good floodplain management within their boundaries. And indeed, sir, we think it might even act as a disincentive, particularly to a community with a lot of erosion areas, that might say, why are we in this program? You won't insure the erosion areas anymore, and yet we're expected to enforce floodplain management in these areas. It's not the deal they made and this really concerns us, Senator. I just thought we'd get that up front.

Senator KERRY. All right. We'll take a look at it.

Mr. COLLINS. Thank you, sir.

Senator KERRY. Thank you very much. Appreciate it.

If we could ask the members of panel number three to come forward.

[Pause.]

Thank you very much for your patience, and thank you all for readjusting your own schedules and coming back today.

Why don't we start with Peggy Bowker, the Chairperson of the National Flood Determination Association, and then kind of run through, Michael Stamper, Kenneth Austin, Larry Palmer, and Robert Engelstad, in that order.

Ms. Bowker.

Ms. BOWKER. Good morning.

Senator KERRY. The light will flash, and if you could try to stick in there, we can—all testimonies will be placed in the record in full, as if read.

STATEMENT OF PEGGY BOWKER, CHAIRPERSON, NATIONAL FLOOD DETERMINATION ASSOCIATION, RENO, NV

Ms. BOWKER. All right.

I'm the Chair of the National Flood Determination Association, and I'm happy to be here today to testify on behalf of NFDA on S. 1405.

Flood zone determination companies offer specialized services to lenders by reviewing location of properties which will secure a loan, and by providing information as to whether it is within a special flood hazard area shown on FEMA's flood insurance rate maps. This review provides sufficient information for a borrower to determine whether flood insurance is required in a lending transaction.

Our organization represents a broad spectrum in the flood determination industry, and includes members who've been in this business for more than 15 years, as well as more recently formed businesses. We have large national corporations, and we have small regional companies.

We'd like to commend you, Senator, and your staff, as well as the other Senators, for the formulation of this important piece of legislation. We feel that it's extremely important to the provisions that the current law be strengthened, especially in regard to compliance. The NFDA strongly supports the intent of the legislation which is before us today. We do have some comments on specific sections.

We commend the requirement that premiums for flood insurance be paid to an escrow account. Currently, we feel that part of the problem with increasing the policy base is that borrowers will take out a policy to close a loan and subsequently drop it.

We do, however, prefer the current practice of the 10-day notice that is used in the guidelines for closing a loan, rather than the language that's in the bill. We feel that if a borrower is notified at the closing table that the property that he's purchasing is flood prone, and that he needs to have flood insurance, it's not sufficient time for him to make a decision or obtain a policy. So the current practice of a 10-day notice is probably preferable in line with the goals of the compliance section of this bill.

We feel like the notification by participating communities of changes in their maps to individuals within their community perhaps is going to place a large, unnecessary burden on the community. There are an awful lot of communities that don't have the facility of database and computer-driven tax statements.

We believe that currently it's FEMA's, when FEMA changes a map, they publish within the Federal Register elevations, change flood elevations. They also publish those within the paper of circulation in the community where the changes take place.

We believe if that policy of publishing elevations was modified and that perhaps a map that showed the effected areas were published by FEMA at the conclusion of map changes, that it might be more effective.

We think that the provision for the Director of FEMA to provide a review, when determinations that have been performed on properties are contested, may be unnecessarily burdensome to FEMA.

We've found, especially when we're doing determinations on a second mortgage or something where someone already has a mortgage in place, and then they're notified that they're in a flood zone, they become a little argumentative about whether they're in a flood zone and whether they need flood insurance. I think that the amount of contested determinations has been perhaps under-estimated in this case. I don't believe that the Director's office or the regional offices of FEMA have the resources to do those.

The two issues that were not included in this bill, that we believe would be important to achieve your compliance objectives, one would be the prohibition on any waiver of insurance which some lenders make a decision to waive insurance requirements and self-insure. The other one is a provision for pass-through——

Senator KERRY. You would not allow—you would have a prohibition on that?

Ms. BOWKER. In the case of flood insurance, yes, if you wish to have the program operated as envisioned.

Senator KERRY. Prohibition on waiver?

Ms. BOWKER. Yes. And an additional provision that was in earlier legislation was the provision that lenders could pass through fees for determinations. Some State and local laws prohibit that, and some agency regulations.

Senator KERRY. And you're recommending?

Ms. BOWKER. We're recommending a provision be included, and there's specific language in my written testimony, adapted from S. 2907.

Senator KERRY. Which would make it optional or?

Ms. BOWKER. Which would make it allowable that a reasonable fee be passed through.

Senator KERRY. OK, fair enough.

Ms. BOWKER. We also commend, in title VI, the provisions that changes to amounts be published, because that's certainly something that makes it difficult for lenders and determination companies to form their services.

Senator KERRY. Good. Good recommendations. Thank you very much.

We've sort of changed the order here. We'll go to Mr. Engelstad.

STATEMENT OF ROBERT J. ENGELSTAD, SENIOR VICE PRESIDENT FOR MORTGAGE AND LENDER STANDARDS, FEDERAL NATIONAL MORTGAGE ASSOCIATION, WASHINGTON, DC

Mr. ENGELSTAD. Mr. Chairman, my name is Robert Engelstad. I'm Fannie Mae's Senior Vice President for Mortgage and Lender Standards. We appreciate the opportunity to discuss Senate Bill 1405.

Fannie Mae supports the major provisions of the legislation as they relate to the secondary mortgage market corporations. In particular, we believe the enhancements to be provided by clear authority to require flood insurance after loan origination when remapping occurs, the escrow requirements, a standardized flood hazard determination form, more informative flood insurance rate maps, and the establishment of a flood insurance task force and a mapping advisory council, can all significantly help mortgage lenders ensure that flood insurance is obtained when required.

Our one disagreement concerns the proposed requirement that Fannie Mae's new regulator develop regulations to cover our flood insurance compliance efforts. This disagreement has little to do with our desire to make sure that every mortgage we buy that should have flood insurance indeed has it.

Instead, we are concerned that a comprehensive regulatory framework that was 2 years in the making first be given a chance to work as intended before additional responsibilities are assigned to the regulator.

My testimony this morning will summarize two areas from the prepared statement that was submitted to the subcommittee on Monday.

First, a general description of the principles of Fannie Mae's underwriting standards, and the quality control procedures we use to ensure that lenders that sell loans to us are in compliance. And, second, some specific comments on the proposed legislation.

Fannie Mae requires flood insurance for any property when its improvements are located in a special flood hazard area that has federally mandated flood insurance purchase requirements. Our property appraisal standards require that our lender's appraiser determine whether or not the property is located in a special flood hazard area.

We recently changed the appraisal form in order to improve the quality of the information. Previously, the appraiser indicated whether the property was in a special flood hazard area and, if so, provided specific information from the FEMA map.

With the change, appraisers are now required to note the FEMA map information for all properties, regardless of whether or not the property is in a special flood hazard area. We think this small change will help improve lender compliance. In addition to relying on the appraiser for making the determination, some lenders also rely on information provided by companies that specialize in making flood hazard area determinations.

Whether a lender relies on the appraisers determination or another source, Fannie Mae holds the mortgage lender accountable for the accuracy of the determination.

Our guidelines on flood insurance are part of the extensive underwriting standards we have established for loans we buy from primary lenders. Rather than underwriting every loan purchased, we delegate the underwriting and approval of the loans to the origination lender. Our contracts with these lenders require them to warrant that each loan sold to Fannie Mae complies with all of our requirements.

We enforce these guidelines and ensure the integrity of our purchase through lender monitoring programs, quality control, underwriting reviews, and the lender's contractual obligation to repurchase loans found not to meet our standards.

As a secondary market investor that is not involved with the mortgage until after it is made, our flood insurance compliance efforts begin after the loan is originated. Through our underwriting reviews, our lender operation reviews and the contractual obligations of our lenders to remedy mortgage deficiencies, we effectively enforce the policy of holding our lenders accountable for proper flood insurance coverage, both when the mortgage is made as well as throughout the life of the loan that Fannie Mae holds the mortgage investment.

We use several methods to monitor compliance with our flood insurance requirements. These checks includes the underwriting reviews that we do after we purchase the loan on a sample of the loans we purchase. Our review includes checks of the HUD–1 settlement statement. When the appraisal form indicates that the property is in a flood hazard area, the HUD–1 settlement statement will tell us whether or not the flood insurance was purchased at settlement.

Another method we use to check whether or not the lender's determination was appropriate is for a sample of loans that we buy, we will order our own appraisals of the property and our instructions to the appraiser include checking whether or not the property was indeed in a flood hazard area.

In any case that we determine that the lender did not get flood insurance when they should have, the loan either must be repurchased by the lender, unless the lender can then obtain the flood insurance.

With respect to maintaining the insurance throughout the life of the loan, we have, as part of our normal course of business, reviews of lender operations, and that review includes assessments to make sure that the lenders have in place procedures to ensure the maintenance of the insurance during the life of the loan.

Now a few specific comments on the legislation.

The National Flood Insurance Reform Act contains many initiatives that Fannie Mae believes will be beneficial. Because most of the provisions do not affect Fannie Mae directly, I will confine my comments to two areas where Fannie Mae has significant interest.

Because of the difficulties due to the ambiguity of the current statute, Fannie Mae supports revisions to clarify the lender's authority to require the borrower to obtain flood insurance on existing loans, particularly loans reclassified as being located in special flood hazard area after FEMA remapping. But we believe that the provision of the bill that covers this needs some minor technical correction in order to make it quite clear that that authority exists.

An additional correction of the scope of the provision is needed to achieve maximum effectiveness in accomplishing statutory objectives. The bill requires that borrowers be notified of the need for flood insurance by regulated institutions and Fannie Mae and Freddie Mac.

We believe that this provision is both too broad and too narrow. It should include not only regulated institutions, that is, banks and savings associations, but also other lenders, such as mortgage bankers, in order to pick up all those who are in the best position to notify borrowers of the necessity for flood insurance. For the same reason, the secondary market agencies should not be included since we have no direct contact with the borrowers.

And finally, there is one section of the proposed legislation that Fannie Mae cannot support; section 201(a)(3) would require the independent HUD regulator to issue regulations mandating that Fannie Mae and Freddie Mac establish procedures to ensure flood insurance coverage of all loans they purchased that are located in special flood hazard areas at the time of origination.

We appreciate that, at first blush, it seems like traditional practice to assign new regulatory requirements when it identifies a problem and assembles a package of directives to address the issue.

But as the President and Vice President pointed out just last week in their initiatives to reinvent Government, the standard operating procedure leads to so many new regulations that one often needs a forklift to carry them around.

We believe that, in this case, a close examination of the problems suggest that new regulatory authority is not necessary, may involve added costs for everyone, and moves away from the new regulatory approach that Congress designed just last year in establishing our regulator.

Indeed, this committee will be marking up, next week, a bill to develop community development banks, and title III of the bill addresses regulatory relief and paper work reductions for federally regulated institutions.

In sum, we urge Congress not to impose new regulations, not because we disagree with your goal, but because we share it, and we do not believe it is necessary to add to the regulatory costs of the housing finance system.

Ensuring flood insurance coverage is something that we want to do, something that we are doing, and something that is in our best business interest to do.

We welcome the opportunity to discuss this matter today, and look forward to continuing to help the subcommittee and FEMA in every possibly way to improve administration of the flood insurance laws. I'd be pleased to answer any questions.

Senator KERRY. Thank you very much.

Mr. Stamper.

STATEMENT OF MICHAEL K. STAMPER, EXECUTIVE VICE PRESIDENT FOR RISK MANAGEMENT, FEDERAL HOME LOAN MORTGAGE CORPORATION, WASHINGTON, DC

Mr. STAMPER. My name is Mike Stamper. I'm the Chief Credit Officer of the Federal Home Loan Mortgage Corporation, otherwise known as Freddie Mac.

Thank you for the opportunity to testify on flood insurance and this important piece of legislation. I'll keep my comments direct and to the point.

We applaud Senator Kerry and the Members of the subcommittee for their efforts to clarify and strengthen policies and procedures relating to flood insurance. There are three areas I'd like to address in my testimony today.

First, Freddie Mac's experience with flood insurance. In fact, I'm pleased to report to the subcommittee that Freddie Mac is in substantial compliance with the statutory mandate under the National Flood Insurance Act.

Second is the subcommittee's concern that large numbers of homeowners in flood hazard areas do not have flood insurance, and why this is the case.

There are many reasons why a homeowner in a flood zone does not have flood insurance, not the least of which is that about 42 percent of homeowners don't have mortgagees.

And, third, some technical issues having to do with post-origination authority contained in the proposed legislation.

Let me give you just a little bit of background on Freddie Mac. We're a secondary market institution, which means we're a business, not a regulator. We purchase mortgages from lenders called sellers, and these mortgages are subsequently by institutions called servicers. It's a high volume business, and as an example, last year, we bought 1.7 million individual mortgages.

The secondary market delivers huge benefits to consumers, but it depends on efficient, streamlined processes to keep the costs to consumers low. We achieve these efficiencies by relying on representations and warranties from seller/servicers and maintaining a compliance monitoring system.

What I'd like to do is describe that system and how it works, but as one summary point, I'd like to point out that we've experienced three major floods in the past 4 years, and we've not experienced any material losses as a result of that. Let me start first with our compliance around newly originated loans.

Our basic requirement is that every property obtains an appraisal. The appraisal identifies whether the property is in a flood zone. And if it is, either flood insurance or proof of a waiver is required. The way we ensure compliance to this is we conduct on-site audits of sellers to determine the adequacy of their internal processes.

Since 1990, we've conducted 500 such audits and our compliance rate is 98 percent. Moreover, the institutions who were not in compliance have had to adjust their control weaknesses. In addition, we reinforce this with various quality control processes and with third party audits.

And finally, just prior to this testimony, just to make sure that we have compliance on obtaining flood insurance, we drew a special sample of loans in flood zones to review the level of compliance, and found no instances of non-compliance in the sample.

The second area is the ability of services to maintain the flood insurance after the loan has been originated. Our basic requirement is that servicers are required to maintain flood insurance throughout the life of the loan. This process is very similar to the process they use for all forms of homeowners insurance. Again, the servicers are subject to audits.

And once again, to make sure we had compliance, we drew an additional special sample of seasoned loans in midwestern flood zones to determine the compliance rate. In this case, the sample indicated the compliance rate was 98 percent.

Finally, there's the area of remapping and what occurs post-origination. We go beyond the statutory mandate to require servicers to obtain flood insurance on existing loans if they are aware that the property has been remapped into a flood zone.

In this area, we've had difficulty obtaining compliance for basically two reasons. The first is that there are questions about the statutory authority to require flood insurance when the properties have been remapped. Second, and maybe more substantive, is that the communication around remapping from FEMA just isn't effective.

We're pleased to see that one of the intents of the Kerry bill is to address both of these issues, and we'd very much like to work with the subcommittee to address some technical issues relating to both of these points.

Finally, in summary, there's three points I want to summarize.

First of all, because our portfolio is already in compliance, additional regulations on Freddie Mac would not significantly improve compliance for the National Flood Insurance Program.

Second is that there's ambiguity around the authority of lenders to require insurance on properties that have been remapped, and this ambiguity needs to be clarified.

Third, the maps are difficult to read, and communication around remapping is unclear. And we're very pleased that the Kerry bill seeks to address this problem.

Thank you. And I'd be happy to answer any questions.

Senator KERRY. Thank you very much.

Obviously, we hope in this bill that we're addressing this mapping issue which everybody concurs is a problem. And I think we are, and hopefully that can be eliminated.

Let me jump over to Mr. Austin, and then I'll come back for Mr. Palmer.

STATEMENT OF KENNETH L. AUSTIN, JR., VICE CHAIRMAN OF LOAN ADMINISTRATION COMMITTEE, MORTGAGE BANKERS ASSOCIATION OF AMERICA, WASHINGTON, DC

Mr. AUSTIN. Mr. Chairman and Members of the subcommittee, I'm Kenneth L. Austin, Jr., executive vice president of Wendover Funding, located in Greensboro, North Carolina. I'm also currently serving as vice chairman of MBA's Loan Administration Committee.

MBA appreciates the opportunity to appear before you today to testify on S. 1405. MBA supports the objectives of the National Flood Insurance Program, and believes that flood insurance is essential to protecting both the property owner and the lender.

In the past, MBA believes that there was little emphasis placed on that program and that has contributed to low compliance. However, I strongly believe that situation has changed in the last several years. I believe that mortgage lenders and servicers, in response to heightened interest in the program, are making significant, honest efforts to comply with the existing mandatory flood insurance requirements.

However, these efforts have been partially thwarted by the lack of clear legal authority to require flood insurance when there is a remapping after the loan is originated. Mortgage servicers are waiting for clear direction from Congress as to what precisely their servicing responsibilities are. Given the potential expense, this is understandable. Mortgage servicers need to have the tools in order to make this program work.

Servicers need to know precisely what form of notice consumers should receive when their property has been found to be within a flood zone. Servicers need to have standard procedures to follow when notifying borrowers about a flood zone change and when they have to force place insurance if the borrower fails to purchase the insurance. S. 1405 contains guidelines for these notices and for handling consumer disputes abut a flood zone designation.

These provisions need to be clarified to cover mortgage bankers. This provision also needs further clarification to preempt State or local laws and regulations that conflict with these requirements. Lenders and servicers should only need to comply with one set of requirements established in the Federal statute.

Some State authorities have questioned the legality of requiring flood insurance after the mortgage has been executed, as well as the method of notification, the mechanism of resolving disputes over the flood zone determination, and the requirement that borrowers purchase that insurance at their own expense.

Finally, current law requires the lender to make a flood zone determination only at the time the loan is originated. After origination, the lender must maintain the tracking of insurance for the life of the loan. However, current law does not require lenders or servicers to review loans during their terms to determine if a remapping has brought a property within, or removed a property from a flood zone.

Although S. 1405 clarifies the law somewhat, MBA is extremely concerned that, as currently drafted, it does not extend this clarification to mortgage banking servicers. The mortgage banking industry strongly supports clarification of these issues in order to allow servicers to enhance their efforts to upgrade compliance with the flood insurance program.

MBA is pleased to see that S. 1405 requires FEMA to publish all map changes, revisions, and amendments. This will give lenders and servicers a single source to rely upon to determine whether mapping changes have taken place.

We believe the most appropriate balance of responsibilities is to provide lenders with the tools to carry out the compliance objectives laid down by S. 1405. Enhanced guidance and explicit legal authority are key to putting lenders in the position to achieve these objectives.

I would like to address another issue. It is often stated that mortgage bankers are not covered by the Federal flood insurance program. It's true that non-bank and non-thrift lenders are not directly mandated by the flood insurance statute to require flood insurance. But mortgage bankers are regulated by function.

By this, I mean that mortgage bankers are quite clearly, although indirectly, drawn into compliance. They sell many of the mortgages they originate to Fannie Mae and Freddie Mac, and they must originate FHA and VA mortgages in compliance with strict regulations.

Current law requires and S.1405 underscores that FHA and VA loans, as well as loans purchased by Fannie Mae and Freddie Mac, must carry flood insurance if the property is located in a floodplain zone, and that flood insurance must be maintained for the term of the loan.

I would like to turn now to compliance requirements. S. 1405 requires lenders to maintain a standardized flood and erosion hazard determination form in every loan file. This form must be less than 5 years old. MBA has several concerns about these requirements.

First, keep in mind that S.1405 imposes a significant new servicing responsibility, which is to extend coverage to properties where there has been a remapping after origination. Today, a lender is only required by law to check a loan at origination and then to maintain coverage.

MBA supports expansion of the law to cover post-origination changes. However, in meeting that expanded compliance burden, we hope that this committee will minimize the impact on outstanding loans that are currently in servicing portfolios.

MBA does not believe that services should be required to update existing loan files once the standard hazard determination form is created. This requirement should cover loans originated after the standard hazard determination form is developed. Otherwise, servicers are essentially subject to a de facto requirement to perform a portfolio review in order to place the appropriate standard form in each and every loan file.

For outstanding loans, MBA believes servicers should only be required to provide relevant flood information, as it is currently contained in the loan files, whenever that information is requested.

Second, S. 1405 gives the flood certification a 5-year lifetime gain, for loans outstanding, this is a significant additional servicing burden. MBA believes this requirement should only apply to loans originated after enactment. Lenders can then require borrowers to purchase a certification contract that will be good for the life of the loan.

If indeed it's the intent of S.1405 that all servicers must maintain the standard form and go back into outstanding loan files to insert this new information, and to recertify this information every 5 years, then MBA strongly believes that an amendment should be added to allow servicers to pass the cost of providing this standard form through to borrowers.

In summary, MBA supports the goals of the National Flood Insurance Program. The objective of ensuring adequate flood insurance where necessary is one that the industry embraces. MBA believes that consumers benefit when servicers assume the burden to determine flood zone coverage. The Federal program, as well as State and local authorities, share in that benefit.

MBA appreciates this opportunity to testify and express our views on S. 1405. We would be pleased to answer any questions or provide further information.

Senator KERRY. Thank you very much. Appreciate it.

Mr. Palmer.

STATEMENT OF LARRY W. PALMER, REDLAND INSURANCE COMPANY, COUNCIL BLUFFS, IA

Mr. PALMER. Mr. Chairman, I'm Larry Palmer, director of Flood Insurance for Redland Insurance Company. We're an Iowa domiciled property and casualty company headquartered in Council Bluffs, IA.

Our primary insurance products are directed toward the heartland. We provide WYO Federal flood insurance primarily in the upper Midwest.

I'm testifying today on behalf of Redland Insurance Company and its participation in the National Flood Insurance Program, and in particular, our experience this summer with the devastating floods that occurred within the very core of our marketing region.

Furthermore, I'm also representing the Flood Insurance Servicing Companies Association of America, Inc., also known as FISCAA, of which I am a charter member, director and officer, speaking on behalf of its member companies that collectively have issued over 700,000, roughly 30 percent of the 2.6 million NFIP flood insurance policies issued nationwide primarily through independent insurance agents.

My personal experience with the NFIP and its "Write Your Own" initiatives started with its very inception in 1983. My focus today is on the issue of compliance.

I share some of Senator Kerry's concerns expressed in his statement in the August 6, 1993, Congressional Record. Redland Insurance Company and FISCAA strongly support legislation that will strengthen the NFIP, increase compliance, provide incentives for community floodplain management, and mitigation assistance.

I appreciate the point that Senator Kerry makes in his Congressional Record statement by quoting from the Bible about the foolish man who ". . . builds his house upon the sand. . . ." However, it seemed appropriate for me today to correct the record slightly by pointing out that the majority of the folks in the upper Midwest build their homes on soil that supports their main "home place," that, in many cases, they have resided in for years.

The house, on average, is about 40 years old—that's pre-firm by NFIP standards—and has a basement or storm cellar, is constructed from wood with clapboard siding and does not afford a breathtaking view of any ocean body of water. The house is typical of a home in Valley Junction, Cedar Rapids, or Hamburg, IA. The value of these structures, on average, are less than $70,000.

There most certainly is no mass migration of people to retire or build a second recreational home in any of these areas as above mentioned. In many cases, their main home place was built before the NFIP even existed. The problem is, however, they were built in Special Flood Hazard Areas that were later determined by the NFIP.

I cannot believe that these families continue to live there because flood insurance is available now from the NFIP. They live there simply because their home place is their roots. It's not a whole lot different than why the Bush's of Kennebuckport, ME, and the Kennedy's of Hyannisport, MA, and many other Americans maintain their homes where they do.

I've been following the reform legislation affecting the NFIP since Congressman Bereuter of Nebraska introduced H.R. 1236 in 1990 and H.R. 62 in January 1992, which I might add are both very similar in many respects to Senate Bill 1405, particularly with the compliance requirements.

I have watched as the bills gridlocked while major weather catastrophes have inflicted devastating floods on our country over the past 3 years, and wondered when such an event would strike the Midwest and how soon legislation would be enacted to increase compliance.

With reference to compliance, I've attached a graph to my testimony that I trust you will find self-explanatory relative to policies issued, or lack thereof, in the eight States affected by the Midwestern summer floods.

After Hurricane Andrew struck in August 1992, I doubt if anybody noticed the increased rainy weather patterns developing over the upper Midwest. The 16-inch rain within a 24-hour period that struck south and west of Des Moines just a year ago today, September 15, 1992, hardly raised a headline beyond the State's boundaries. It was primarily rural flooding.

In the winter of 1992–93, I saw increased snowfall over much of the region in the upper Midwest. It was then that I began to realize that the Midwest drought of the past 5 years was coming to an abrupt end.

It was in late February and early March 1993, that Redland Insurance Company started experiencing its first normal seasonal flooding events, abnormal, above normal seasonal flooding events.

The early thaw was causing ice jams on the Platte River just to the west of Omaha, NE. Robert and Mary Kriss of rural Gretna, NE, lost their home completely when ice jams diverted the main channel of the Platte River and ice chunks flowing in water pounded their home of over 20 years off its foundation and took it and its contents out into the main channel. The Kriss family had flood insurance but others in the surrounding area did not. Unusual circumstances? Not really.

All these non-headline flooding events happen to the extent that on a nationwide basis, over 80 percent of the national catastrophes are flood-related. Small towns and hamlets on rivers you never heard of incur flood damage in the millions of dollars every year.

My purpose today is to add a new perspective to your thinking about the NFIP and its value to the average citizen in the Midwest, as compared to those who build upon the sand. For example, erosion setbacks to someone from Hamburg, IA may be a term denoting how a farmer terraces the land to maintain moisture in the soil in dry times, or prevent soil erosion in wet.

What about environmental issues? No, we're not affected by the Florida Keys mule deer issue, but we are concerned about the endangered sand hill cranes, the pallid sturgeon, the burying beetle, and even the prairie fringed orchid. But that does not have anything to do with why only one in ten properties located in the Special Flood Hazard Area in the Midwest have flood insurance.

Until the flooding of biblical proportions that struck the Midwest this summer, the average homeowner did not realize: No. 1, their dwelling was in a designated flood hazard area, or even if their community was participating in that National Flood Insurance Program. No. 2, that their standard homeowner policy excluded coverage for losses incurred by the flooding peril; and No. 3, if they have a mortgage that was effective after 1974, were not aware that flood insurance was required.

Furthermore, my guess is that statistics will confirm that many homes in the Midwest have their mortgages paid off and will chose not to purchase flood insurance voluntarily because they do not perceive the risk exists to their home, even after the summer floods, or feel the value of coverage, as it relates to the average premium of $300 is simply not worth the expense. Let me give an example.

I've received many complaints from homeowners in the Midwest relating to the fact that the NFIP flood insurance policy excludes coverage for contents and finished rooms in their basements. Basements are fairly common in the Midwest, and many families that cannot afford to trade up to larger homes as their family size and needs warrant, simply choose to build that extra bedroom, office and/or recreational place in the basement.

The coverage does not exist because the rates under the NFIP program have not taken that exposure into consideration. I appreciate that fact and understand why the NFIP does not provide coverage. But tell that to the homeowner that equates the real value of flood insurance to that area [the basement] most likely to sustain the damage from flood.

I don't have a solution to this issue, but would be neglecting my responsibilities here today if I did not bring that concern to your attention. Worse yet, if you have issued an NFIP flood policy because the lender requires it, but then, we're the company that has to deny the claim because there's no coverage for the damage in the basement.

It is true the main items in the basement, such as the building foundation elements, furnace, hot water heater, electrical junction boxes, sump pumps, et cetera, are covered, but that does not make Mr. Rush Ridings of Papillion, NE any happier about his flood loss this summer. "Our family room is one of our main living areas," says Mr. Ridings. He had flood insurance, for which I believe he was better off than his neighbors who did not, but this coverage void did not help him.

Nevertheless, I still believe that the average homeowner that resides in the special flood hazard area is far better off with flood insurance than without. The NFIP has helped hundreds of thousands of Americans rebuild their homes devastated by floods over the years, and even as we speak, that process is continuing today.

So far, Redland Insurance Company has in excess of 400 flood claim losses reported since June 1993. That probably doesn't strike you as very much, but the real point I want to make is that means there are many thousands more properties out there without flood insurance.

The irony of the situation is that just in one county of Florida, Pinellas County, which is the St. Petersburg area, has more active NFIP flood insurance policies, about 93,000 policies, than all the flood policies currently issued in the entire eight States affected by the Midwest summer flooding and declared disaster areas by the President. That's about 82,000 policies. One county in Florida has 11,000.

I believe the taxpayer in general and, more importantly, the family that has NFIP flood insurance policy is much better off with flood insurance, regardless of where they reside.

Our goal and the wisdom of this committee's final judgment on Senate Bill 1405 will be the test of that. Therefore, on behalf of Redland Insurance Company, I support passage of Senate Bill 1405.

And if I could be permitted, there's just two comments I'd like to make on particular sections of S. 1405.

First, section 202, and here's another example from the flooding this summer. Escrow for flood insurance premiums is very important, in order to prevent non-renewals of flood policies and the only way to quantify the renewals and assure compliance and that the premiums are available at the time of renewal.

Specific example. In 1990, West Des Moines and Valley Junction, Iowa, experienced regional flooding that devastated a small portion of Valley Junction and many, many homes were damaged. Many of them were insured by our company. Unfortunately, we've discovered now, with the flood of 1993, some of those same families were flooded again but they had dropped their flood insurance.

They didn't have flood insurance in 1990. They applied for a disaster assistance loans and the requirement was that they get a flood insurance policy. The taxpayer even advanced them, along with the loan, the premium to pay it, and hopefully they would pay it at the renewal. It wasn't escrowed. The renewal came up. They simply dropped it. Now they have their hand out again for a disaster assistance loan with no flood insurance.

Second, section 205. I simply do not believe that the full cost of flood zone determinations should be passed on to the borrower. I think there should be some sharing, not only with the taxpayer obviously, but the consumer, the borrower, and the bank.

In closing, I would like to once again refer to that part of the Bible, specifically the New Testament, Matthew 7, verse 24, that Senator Kerry has drawn the parable about the house built upon the sand, wherein it also suggests that it is indeed a wise man that builds his house upon a more solid foundation. Perhaps the subcommittee will see the wisdom of moving the NFIP on to more solid foundation by leading the way toward passage of Senate Bill 1405.

Mr. Chairman, that concludes my statement, and I'll be happy to address any questions that you or Members of the subcommittee may have.

Senator KERRY. Thank you very much, all of you.

I think it's interesting, as some of you have testified, there's been unanimity in the phrase, we support the goals, while picking a piece here and there. As I listen to the unanimity of support for the goals from all sectors of the economy, I'm struck by what has kept us here for 3½–4 years, in not implementing those goals. And it is that obviously there's nothing perfect in this process.

One person's desire to have full compliance is another person's regulatory imposition. One person's regulatory imposition avoided is another person's watching the flood process problem not be resolved. There's got to be a give and take here. And I really want to serve notice that I think we're really reaching the point of diminishing capacity for compromise in terms of balancing the interests.

I want to explore a couple of these things with you, but there's no perfection in any piece of legislation. We've all learned that. And we all understand how the tug of war goes on down the road until finally people kind of throw up their hands, because the momentum is such it's either going to pass or it isn't.

We all know how that works. But I think that I want to explore some of these views about what might or might not be an adequate change at this point in time.

Mr. Austin, you mentioned, for instance, I think legitimately you've exercised a desire to see a minimization of the impact on existing review and so forth. And obviously there's got to be some review, some capacity to know that people are buying this. The example given by Mr. Palmer of somebody who got disaster assistance with a premium forwarded to them, and they still don't wind up with it, and then they come back for more disaster assistance. Now I'm sure you would agree that's intolerable.

Mr. AUSTIN. Absolutely.

Senator KERRY. How do you guarantee that that person is going to wind up buying the insurance? You support the escrow concept?

Mr. AUSTIN. Absolutely.

Senator KERRY. And beyond the escrow concept, what happens in the situation for the non-regulated mortgage broker who might not be dealing with Fannie Mae or Freddie Mac?

Mr. AUSTIN. That's very difficult to ascertain because they are not mandated, so they are not being regulated in any way to enforce the Act. I think the additional attention that's given, and the education that FEMA plans to educate the borrowers in getting the word out that flood insurance is available and should be obtained if they live in that floodplain.

But as far as the mortgage bankers, we're going to comply with the regulatory——

Senator KERRY. Would the best way be to shift the responsibility to the individual in the floodplain, assuming, obviously, adequate notice and adequate mapping capacity, that that person is then responsible for either having it, or they don't get disaster assistance?

Mr. AUSTIN. Yes, that's one way. And also another way is that the lenders can be better-notified of the remapping. That's been a significant problem.

Senator KERRY. That's contained in there. Do you think that our efforts to deal with that are sufficient in this?

Mr. AUSTIN. To a point, yes, sir.

Senator KERRY. When you say to a point, what more would you do?

Mr. AUSTIN. The efforts that we have recommended, and some of the changes that we recommended goes a little further, that discovery period, or that discovery effort that's going to be made by both FEMA and the lenders will get to the point that we can identify all the properties that are involved in those flood zones.

Senator KERRY. Fair enough. Well, we hope, obviously, over the 5-year period we've designated that that's going to happen. And I think it will happen.

Let me just clarify, for you, I want to make sure that you and others interested in this, understand, because you raised two very legitimate questions, and I want to answer them.

In minimizing the impact on existing insurance policyholders and lenders, there is no portfolio review contemplated in this, so this is not retroactive for existing policies. It is prospective and it does embrace the concept only of beginning with those policies at the point of enactment.

Mr. AUSTIN. Thank you.

Senator KERRY. We will make sure that is clear in the legislation.

Second, on the 5-year time period, that also is contemplated not to be going backward, have to come up with proof. That is also from the date of enactment and that 5 years starts at that point in time. So there is neither portfolio review nor, I think, an unfair burden in terms of the 5-year time period.

Mr. AUSTIN. Thank you.

And I'd like to point out that many lenders, on their own up to this point, have done reviews of their portfolios to ascertain whether or not they are in a floodplain. And we will continue to do that even though it's not mandatory.

Senator KERRY. Good.

Mr. Engelstad, you, in your testimony, made a comment, you know, we're going to do this because, after all, it's in the best interests of business to do this. If you're a lender, you want to make damn sure that the property you're lending, your equity's not going to be wiped out, obviously.

But then it begs the question. If it is truly in the best interests of business to be doing it, why is such a low percentage covered? Why are not lenders spontaneously, if it's in their best interests, doing their own portfolio review and guaranteeing the coverage?

Mr. ENGELSTAD. That's a good question, Senator. I don't have a convincing answer, other than when I looked at the GAO report, it seems that the compliance is a lot higher than many believe. When the GAO looked at the properties that were required to have flood insurance, about 64, 65 percent of them did. Now, evidently, they did not look at, they weren't able to distinguish the ones being sold to Fannie Mae or Freddie Mac.

Senator KERRY. Please understand we discussed this earlier with GAO. In testifying, she said, and specifically, Ms. England-Joseph, do not extrapolate this outside of the area where we took this small sample. The sample was a very small sample, was a northeastern sample and in a particular area. And FEMA and NOAA and others would dispute completely the notion.

I mean almost everyone else agrees with the current, I mean, we know that out of these 11 million households in the floodplain, only 2.6 or so are covered, so it's important to reflect on that.

Mr. ENGELSTAD. Right. I appreciate that. And based on our experience with our quality control efforts and the very, very small numbers of times that we find that properties that should have had it didn't have it, we cannot square between the numbers that FEMA and others cite and our own experience.

Senator KERRY. Well, let me ask you this. Share with us what policy you have in place, for instance, to ensure that a policy doesn't lapse after origination.

Mr. ENGELSTAD. The procedures we use in that regard that we will do for our 1,500 or so loan servicers, we do on-site operational reviews of their servicing practices, typically about once a year. That review includes two checks related to flood insurance. One is a check of their procedures, to see that they have in place procedures that will check for the continuation of hazard insurance, and when required, flood insurance. Second, we sample some individual loan files to make sure that the procedures are being followed.

Senator KERRY. That's about a 10 percent spot check, isn't it?

Mr. ENGELSTAD. Yes.

Senator KERRY. Do outside auditors focus currently on the degree to which the flood insurance requirements are met?

Mr. ENGELSTAD. I don't believe they do. I'll check that and report back to you.

Mr. AUSTIN. I would like to comment that yes, they do, in that we're required to comply with the Act. Also, just to comment on the compliance, one of the things we had requested in our comments is the legal authority to require the flood insurance, which is something that's been lacking in the existing law. If we're given the tools representing the servicers and lenders, we can mandate the coverage.

Senator KERRY. You can mandate it for?

Mr. AUSTIN. To the borrower. And that's one of the tools that we've been lacking is that legal authority to proceed with that.

Senator KERRY. Understood.

Mr. AUSTIN. And S. 1405 goes a long ways to give us that legal authority.

Mr. STAMPER. Senator, if I could also add to that? We have a requirement that our sellers have their own quality control process, looking at 10 percent of the loans they originate.

One of the issues they have to review is the existence of flood insurance. That quality control process is subject to review by their independent auditor, and we get reports back from our independent auditor as to their compliance with their quality control program. So that's another form of outside review beyond what the independent auditor might be doing as a service for the servicers.

Senator KERRY. How would you folks respond to the notion that if you haven't bought flood insurance, and there is proof of adequate notice, legitimately being within the flood hazard line, that you would not get disaster assistance?

That at the time of purchase, this notice is given to you.

Mr. STAMPER. You being the borrower or you being——

Senator KERRY. Borrower.

Mr. STAMPER. It's my understanding that that's already the requirement.

Senator KERRY. No, it's waived basically and it's not.

Mr. AUSTIN. Well if we, the lender, have been given notice that they are in there, we take it upon ourselves to move on that, to either force place it or demand it from the borrower, if we'd been given notice.

Senator KERRY. But do you think there's been an attitude within the institutions essentially saying, well, this really isn't too serious, because if there is such a flood or disaster, it's going to be taken care of, so we're not really at risk, and therefore it's not a problem? Wouldn't enforcement go up automatically if there was a greater perception of truly being at risk?

Mr. AUSTIN. Yes, sir. And it has been heightened over the last 2 years because of all the disasters. I think it's been brought to the attention of many lenders.

Senator KERRY. So you think there's a marketplace impact already?

Mr. AUSTIN. Absolutely.

Senator KERRY. Which is one of the things we're trying to balance, obviously; the degree to which there really is that marketplace impact, and the degree to which you don't want to have some over burdened regulatory intrusion on top of the already significant intrusion there is for lending institutions. So I think we're trying to—would you say this is a pretty fair balance with that?

Mr. AUSTIN. Yes. Once again, given the legal authority to move forward with the bill, and the fact that we would have the ability to force place.

As a comment was made earlier, many people are reluctant, even knowing that they are in a floodplain, are reluctant to purchase the insurance. And we have to go through several notifications to the borrower that we know you're in a floodplain, you know you're in a floodplain. It's mandatory upon you to obtain this insurance. It takes quite a bit of follow up and convincing.

And it still may be challenged, based on today's program, it may be challenged based on what the instrument says or what the State requires. So that's why we need the legal authority.

Mr. PALMER. Senator, I have a point of view on those disaster assistance loans, and I may be wrong on this, but I'm learning as this unfolds too. But my impression is that when an individual qualifies for an SBA loan, that to the institution sponsoring the loan, that is guaranteed 80 percent of its paybacks.

For example, maybe perhaps the mindset of the officer in the bank at the time is saying, well, if we don't require flood insurance, our fallback position is the guarantee. So the flood waters can come, there's no flood insurance, big deal. We've got a fallback position of 80 percent of the loan.

Senator KERRY. Sure. Well, I think that's reality. I think that's the question of risk, the perception of risk that I was asking earlier, and it may well be that some of the disaster programs, the guaranteed loans and so forth have eliminated a sense of that risk. So the marketplace isn't really working as effectively.

But obviously, if many, many more people were participating, the rates are going to be also potentially much lower. I mean, the current people being forced to buy and buying are carrying more of the burden of the current rate risk because others aren't. What about the mapping, Ms. Bowker? I'd particularly like you to comment on that.

Ms. BOWKER. What about the mapping?

Senator KERRY. Do you think this 5-year period is sufficient to be able to clarify the mapping issues?

Ms. BOWKER. The 5-year period as provided for in the Technical Advisory Council?

Senator KERRY. Yes.

Ms. BOWKER. It would be a good start. We've been working on mapping issues since I've been involved in NFIP. And I've been involved, in one way or another, since 1979.

Senator KERRY. You raised the issue of the sufficient database over notification in some areas. Was that you who raised that?

Ms. BOWKER. Oh, yes, I did, sir. What I'm concerned about is the requirement that the local community, on that particular issue, that the local communities have to notify individual property owners. That's how I read that section, once the maps are changed. I've been a floodplain administrator in a large county, and I think——

Senator KERRY. How would you go about that? Do you think the communities, or there are certain communities, would you distinguish it by the size of the community perhaps, and then maybe have some alternative for certain sized communities? Or would you simply obviate the need for the communities to do it, and have some other form of notification. FEMA, you suggested?

Ms. BOWKER. Well, my alternative would be to require some publication of the maps. From my personal experience of being involved with the——

Senator KERRY. Well that will happen. Under the structure of our bill, I think there's a three-tiered process.

Ms. BOWKER. Right.

Senator KERRY. There will be the publishing, and FEMA will do the Federal Regulatory, the Federal Register, and so forth. There'll be newspaper and other form of notification, then there'd be the direct communication from the communities.

Ms. BOWKER. Sure. And quite frankly, if you hold public hearings, especially in the western States, nobody comes if it's a sunny day. I mean, it's a tough sell.

[Laughter.]

Senator KERRY. OK. Nobody comes here if it's a sunny day, either.

[Laughter.]

Ms. BOWKER. But there are a number of like small communities, I'm thinking of rural communities in Nevada that do not have official assessors' maps. They just use the recorded events.

Senator KERRY. Well, if you can give us any thoughts on it, I think the current structure is, frankly, as broad as we can try to get at it. We're open to any other thoughts about how we can be more effective about it. In the course of the next week or so, if you can deal with Staff, let's try to do that.

Ms. BOWKER. I think that some of your provisions for the provision that you have in title VI for publication of a compendium on a semi-annual basis of the map changes, that's going to be very helpful. And also publication of the map changes as they occur, that's going to be very helpful to lenders who want to stay up-to-date, because up to now, there's no way to get that information. It goes to a building official in a local community who may be, in a rural place, a dog catcher also, as well as the floodplain manager, you know, and there's no way for lenders to be able to pick up that information.

Mr. AUSTIN. I'd like to just comment on that. She's exactly right. One suggestion that I think that we may have in our written comments is that to deliver this information to the lender and to the borrower, we have suggested that possibly when an area is remapped, that it be indicated on their tax bill in some form, either a yes or no, or the property has been included in the last year in a remapping, just as an attention getter, so that the borrower knows. And also that tax bill is delivered to the lender. That is one method by which it possibly could be delivered. It's just a suggestion.

Senator KERRY. Again, I think Ms. Bowker's observation is accurate. I mean some communities could handle that, and others obviously would not be able to. But it's worthy of trying to factor into our thinking to see how we might be able to facilitate that.

One last question before we shift, which we must do to the next panel because of time. But can any of you involved in the lending process, mortgage bank or otherwise, suggest how one might deal with this non-regulated entity, how you bring them under the sweep, and what is the supervisory mechanism for that?

Anybody have a—other than the fact—and you've made a very telling point, Mr. Austin, and we've noted it in our approach, which is that the vast majority of non-regulated institutions are dealing with Fannie Mae and Freddie Mac.

Mr. AUSTIN. And FHA/VA.

Senator KERRY. And FHA/VA. And therefore must come into compliance under that, so you're really dealing with a far smaller percentage of people who are outside in that, quote, non-regulated area. That's a very telling point, because it doesn't leave you that much of a package.

The question is how, if you wanted to, do you deal fairly with that component that still remains outside, and what's the supervisory mechanism? Any thoughts? Maybe it's something you want to think about?

Mr. ENGELSTAD. Well, Senator, we've thought about it, and the only option we came up with, the one you've already mentioned, has its own problems as far as requiring the individual homeowner.

Senator KERRY. Right. We're going to look at that a little further and see what happens on it.

Ms. BOWKER. I think, I worked in a disaster center, and your suggestion about denying disaster relief to someone who has not obtained flood insurance when they've been given sufficient notice, I think it would be tough to do in the height of a disaster, just because the records and, you know, the information isn't there.

Senator KERRY. Let me give you an example of how very simply the record could be. I mean, somebody's got to sit down at a closing when they purchase their home, and we're making this prospective. This is for all future actions. And since it's going to be escrowed, you're in a situation where, just as you sign occupancy permits and you have a host of other requirements at closing, I mean it doesn't have to be that complicated.

Now I know some people are going to say, oh, my God, you know, another form of closing. But the fact is you really could very easily have sufficient notice right then and there, and people have to become responsible or non-responsible as a homeowner. And you sign, you know, I waive my rights or I acknowledge that I'm required to have it, and so forth.

Ms. BOWKER. How does that piece of paper get to the disaster assistance center, though? That's the problem when you're in the middle of a disaster and the press is there, and you know, we saw days and days and days of what went on in the Midwest and our hearts went out to them.

If you have somebody, big brother sitting there going, well, you know, I don't think it'll fly, you know, just because it doesn't work real well when you're in the middle of a disaster.

Mr. STAMPER. Senator, if I could just come back to one question you asked earlier. On one hand, the perception that a relatively small percentage of people living in the flood zones have flood insurance, yet both Bob and I are saying that our lenders, we believe, are substantially in compliance.

It may be very consistent that 100 percent of the lenders are getting their borrowers flood insurance, yet you still have very small levels of borrowers in flood zones that are covered by flood insurance for a couple of reasons. One in almost half of homeowners don't have a mortgage. Based on our own portfolio, we'd guess that 5 to 10 percent of the mortgages were originated before 1973 and are not covered by the insurance requirements.

Then there's a whole host of technical reasons about insurance requirements, why someone might be exempted. For example, FEMA issues letters to individual borrowers exempting them. Properties that are on the boundary line are exempted. Properties that are in coastal barrier areas are exempted.

Senator KERRY. I understand that, and you're absolutely correct. It's a very important point, which is why I think where we've landed is the most sensible and appropriate place with the minimal intrusion, but the maximum capacity to expand participation.

Mr. STAMPER. But if the issue is increasing the number of homeowners in flood zones that have flood insurance, it seems like there are other areas to push on; most notably, homeowners that don't have mortgages. That seems like the biggest area.

Senator KERRY. We're exploring that, and I think it's an issue of sort of one step at a time. That's clearly an issue on the table, but it is not one that necessarily, even under the original 1973 intent of Congress, has to come under this particular step. But it's something we've got to look at.

Thank you all very much. We will take each and everyone of your comments and suggestions under advisement and work on them in the next week before the Full Committee meets.

If we could have the next panel come forward. Beth Millemann, Kathleen McCauley, Rebecca Quinn, Christophe Tulou, Pat Campbell-White, Thomas "Tommy" Thompson, and Peter Fallon.

Folks, I really need to invite and implore your super cooperation here on the time, if we can. Your full testimonies are part of the record. They will be read. They are going to be a significant part of our work, post this hearing, but I do ask you to try to keep to the 5 minutes, because I've got to wrap up around 11:30 a.m., and I want to have time for a little bit of questioning.

If we could start.

OPENING REMARKS BY SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Hi.

Senator KERRY. Senator, how are you.

Senator MOSELEY-BRAUN. Fine, thank you.

Senator KERRY. You want to make a comment?

Senator MOSELEY-BRAUN. No, I'll reserve any comments, so that I can hear the witnesses.

Senator KERRY. Thank you.

Let's go, if we can, ink the following order. We'll start with Beth Millemann.

Who are the substitutes? We've got a few substitutes here.

Mr. KEHOE. I'm Cary Kehoe, substituting for Christophe Tulou.

Senator KERRY. Say that again. Cary?

Mr. KEHOE. Kehoe.

Senator KERRY. Kehoe. All right. And you're substituting for Christophe Tulou? All right.

Ms. MCCAULEY. Mr. Chairman?

Senator KERRY. Yes?

Ms. MCCAULEY. Peter Fallon of the North Beach Civic Association, Vero Beach, asked me to cover his testimony when I give mine.

Senator KERRY. All right. Then let's go.

And you are?

Ms. MCCAULEY. Kathleen McCauley from Marshfield, MA.

Senator KERRY. Kathleen McCauley from the right State. OK.

[Laughter.]

Senator KERRY. Let's go in this order if we can, then. We'll start with Beth Millemann and then Kathleen, after that, Rebecca Quinn, Cary Kehoe, Pat Campbell-White, Tommy Thompson, and that should—did I leave anybody out? That includes everybody. Thank you.

Oh, Tommy, you have a plane you have to catch?

Mr. THOMPSON. Yes, sir.

Senator KERRY. Why don't you lead off?

Mr. THOMPSON. OK, thank you. I appreciate that understanding.

Senator MOSELEY-BRAUN. If you have to leave at 11:30 a.m., I can wrap up.

Senator KERRY. Oh, could you? Well, that's very kind. Senator Moseley-Braun has very kindly offered to give us a little more time on the back end, after 11:30, so that gives us a little more time for questions, which I appreciate enormously. But it doesn't let you off your obligations.

[Laughter.]

Senator KERRY. All right.

STATEMENT OF THOMAS N. "TOMMY" THOMPSON, FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF HOME BUILDERS, WASHINGTON, DC

Mr. THOMPSON. Mr. Chairman, Members of the committee, my name is Tommy Thompson. I'm a homebuilder from Owensboro, KY, and I'm presently serving as president-elect of the National Association of Home Builders, which is an association that represents some 165,000 firms engaged in all aspects of homebuilding and land development. I want to thank you for giving NAHB the opportunity once again to appear before you to comment on legislation to reform the National Flood Insurance Program, Senate Bill 1405, the National Flood Insurance Reform Act of 1993.

I'm a second generation Kentucky builder and president of Thompson Homes, Inc. My company builds primarily single-family homes and, as such, I'm very familiar with the day-to-day activities and workings of the National Flood Insurance Program. As homebuilders, we can play a critical role in maintaining the solvency of the NFIP through hazard mitigation efforts.

NAHB has always supported the Federal Emergency Management Agency construction standards and practices for flood mitigation. These flood mitigation standards require the lowest habitable area of a structure to be at or above the 100-year flood elevation.

Through the NFIP and the flood mitigation standards, builders are afforded cost effective and technically feasible means of minimizing damage to structures caused by flooding at a price affordable to the housing consumer.

The NFIP, as it relates to construction that has occurred after development of Flood Insurance Rate Maps, or so-called post-FIRM, works relatively well. Flood Insurance Rate Maps were first issued in 1975, so that any subsequent construction conforms to the 100-year flood elevation requirements.

Let me also acknowledge that homebuilders and the building community at large have a responsibility to continue developing better construction techniques for coastal development. We have learned a great deal at NAHB and use this information to educate our members. Obviously, the more we learn about building structures that can withstand severe wind and rain, the less damage that will be sustained, thereby reducing insurance claims and associated repair expenses.

I want to thank Senator Kerry and Senator D'Amato for their efforts to accommodate and balance the various interests that converge on this issue.

Senate Bill 1405 is evolving toward greater recognition of State and local governments control over their resources and land use decisions, while safeguarding the Federal Government's interest in the NFIP solvency. Unlike previous bills, S. 1405 poses no real constitutional problems under the Fifth Amendment's takings clause because it no longer contains an express prohibition on construction and development of an individual's private property.

Senate Bill 1405 also appears to recognize alternative forms of viable erosion mitigation techniques, and provides the flexibility for State and local governments to determine how they manage their coastlines.

NAHB applauds Senator Kerry and other Members of the Banking Committee for their efforts to address the financial soundness of the NFIP. NAHB supports the goals of NFIP to provide affordable flood insurance for property subject to flood hazards.

However, a Congressional research study indicates that only 1.7 million of an estimated 11 million households in flood hazard areas have flood insurance. In light of this data, NAHB concurs with the thrust of title II, which seeks to increase the participation in the fund through strengthened lender compliance provisions, as we were talking about in the previous panel.

Title II of Senate Bill 1405 also should contain provisions ensuring that maps are accurate, that appeals are expeditiously processed, and that those individuals not living in flooded areas not be subject to flood insurance purchasing requirements.

I've just returned from our fall board of directors' meeting with some of the provisions of S. 1405 were debated. Specifically, NAHB opposes that part of Senate Bill 1405 which denies flood insurance through the NFIP in erosion hazard areas.

Section 406 denies coverage within a 30-year erosion zone for any new structure or additions to existing structures if that addition makes the structure not readily movable. It also prohibits flood insurance coverage in between the 30- and 60-year erosion zones for any non-residential structure, residential structure that is not readily movable or additions to existing structures which renders the structure not readily movable.

NAHB opposes this section of the bill for a variety of reasons, not the least of which is what would no doubt have a chilling impact on coastal construction. Beyond that, however, we believe the committee should be concerned about its broader impact on communities and the NFIP. First, section 406 contradicts a very public policy purpose, driving the flood insurance program and title II, which is to increase participation in the NFIP.

And, Senator, as you know, post-FIRM construction would be constructed and covered at actuarial rates, which would have no impact on the fund, I think as the GAO testified earlier. Also we're concerned because section 406, with its varying policies on the type of structure eligible for coverage, coupled with the ever-changing erosion zone designation, will be a bureaucratic nightmare to administer.

For these reasons, NAHB argues that flood insurance should be available for structures in these zones, and the policy should be equitable, consistent with the policy goals, encouraging community participation in NFIP, and at the same time, would prevent or mitigate many adverse impact to a community's existing and potential tax base. This applies especially to those communities dependent upon revenues brought in by tourism and the seashore.

Also problematic from a homebuilders and homebuyers perspective is section 604(b) which calls upon FEMA to give special emphasis to provision of erosion hazard areas where that area experiences an increase in its erosion rate due to a storm or extraordinary event.

This provision ignores real life situations faced by builders who have projects that take several years to complete. While a builder would receive a permit to start construction, intending development to occur within permissible erosion zones, the FEMA remapping before completion of a project could change the zone in which a builder was developing.

So we believe this eventuality is further argument in favor of making flood insurance available through the NFIP for all new structures. Other portions of S. 1405 require clarification.

Section 301 establishes a community rating system to encourage communities participating in the NFIP to exceed the existing floodplain and erosion management measures in exchange for lower premiums. In effect, the title codifies existing practice wherein the Federal Insurance Administration allows the local and/or State government to determine its building practices and codes, provided that those regulations exceeded the Federal Insurance Administration's standards. NAHB supports this provision in concept because it allows a community to decide how stringent its floodplain and erosion management measures might be.

Section 403 is also ambiguous. As currently written, 403 establishes a program for assistance for planning and carrying out State and local programs to ensure reduced flood and erosion risk. These provisions appear to complement 301 of title III, codifying the Community Rating System, by providing additional incentives to States and localities to take steps to control flood and erosion risk beyond the minimum NFIP requirements.

Our comment here, similar to title III, is that the full range of erosion mitigation options be available to States and local communities. NAHB believes the language should include erosion control measures, as identified by title I of Senate Bill 1405.

Again, Senator, NAHB believes a legislation approach should allow the State or local community to determine which approach it believes is best for its community. As a matter of public policy, States and local communities should be given the flexibility to determine which forms of mitigation control best suit their purposes.

This general policy is consistent with the National Research Council's Report, entitled "Managing Coastal Erosion." This report has provided the foundation for much of which is contained within Senate Bill 1405, and NAHB believes the NRC's recommendations on this provision should be incorporated as well.

I appreciate the opportunity to speak before the committee, and stand ready to answer any good questions.

Senator KERRY. Let me just ask a couple of quick ones, since you have to run, and then we'll come back to the others, and I beg your indulgence on that.

First of all, I appreciate very much your suggestions and requests for point of clarification. I think those are legitimate clarification areas, and we can certainly respond to those. And I don't think our intent is different, so I don't see great difficulty in it.

The obvious one area of contention that I think really does remain still in this bill is this issue of the 30-year erosion provision on federally supported insurance. And I'm troubled again a little bit by your—first of all, I enormously appreciate the Home Builders' support this go around. That's a very important support and it certainly changes the dynamics of the entire approach on the legislation, and we are appreciative for that. But I'm finding it just difficult to understand. You mentioned this concept of sort of actuarial rates in terms of the risk within the 30-year erosion zone. Why would the private sector not undertake that risk? And if the private sector won't insure that risk, why should the Federal Government insure that risk?

Mr. THOMPSON. Well, Senator, it's a good question. I think, first of all, the private sector and particularly the building community is taking on the risk by, as I said, being more responsible for developing, researching, and implementing higher construction standards.

Senator KERRY. There's no risk to them in that. They charge the customer for the cost of whatever it is they're building. I mean they're not building altruistically. They're building for profit.

Mr. THOMPSON. Exactly.

Senator KERRY. OK. So whatever they're doing in terms of higher codes and higher standards, they're getting paid for it.

The issue is what happens afterwards when and if damage occurs. Now in a 30-year erosion zone, it's not if; it's when damage occurs. It's a known risk. And at the actuarial rate, the private sector is refusing to insure, or people simply can't afford it. You build a $250,000, $300,000 home on a 30-year actuarial rate, you're paying for the home three times. And so most people aren't going to do that.

Which is why the question is still begged: Why should the Federal taxpayer support insuring the building in a zone where presumably environmentally there are going to be serious questions about it, but also just on a risk basis there's serious questions about it.

Mr. THOMPSON. Well, I think obviously because of the fact that their building in an erosion zone that the possibility certainly of loss exists, but I think we have to look at the facts. If you go back and look at what has been the drain on the fund, it has not been the damage caused by coastal flooding. I think only about 3 percent of the losses, of the repetitive losses to the fund have come from flooding along coastal areas.

I think the vast majority of it has come from rivering damage that has been caused. And I think when you look at the fact that it's actuarially sound, that there is a certain assumption of risk there, and there could be also perhaps some co-insurance put in place with the private sector.

But I think what's more important is if you deny the right of a community to develop its coastline because of its dependence upon the tourism income from that development, its dependence upon the seashore income, its competition with other communities, you're really denying an inalienable right of those people to compete.

And I think again, the facts of the matter are that the losses, and the GAO even spoke earlier about the fact that if it's based on actuarial soundness, that the loss to the fund won't be any negligible at all.

Senator KERRY. I'm troubled by what you're saying. You just used the words, you're denying them the right to develop and the right to compete. You're not denying them the right. If they want to do, they can do it.

Mr. THOMPSON. But they're not having access to the insurance. They have to build at their own risk.

Senator KERRY. The question is should folks working hard in Chicago for an income and folks working hard in Boston for an income be supporting the risk that person is taking by building somewhere that most of them could never afford to build, or dream of living. I suppose they can dream of it, but they're not going to be able—you know, it's hard.

But the reality is, why should they be supporting that development? I mean, the marketplace, we're always being told around here, don't let Government meddle. We're always being told, let the marketplace work. Everybody keeps telling us, hey, folks, keep

Government's cotton picking hands out of our business. Let business do its thing.

Well, business is saying, we don't want to insure this; too risky. The marketplace is saying, you can't get insurance there because it's a foolhardy place to build. Why should the Federal Government say, no, no, no, no. We're going to subsidize this development?

Mr. THOMPSON. Senator, you make a very good point, but my point is that if, in fact, the rates associated with the incidence of risk are based on actuarial sound analysis and policy, I don't think that there will be a risk to the fund. And your point is well taken, that the construction could take place without the insurance, just at their own risk.

But as you know, the public policy of the National Flood Insurance Program is to make eligible all people that build in flood hazard areas to the fund. If this exposure, and if this access to the fund is based on actuarial sound rates, I don't think that there will be a risk to the fund.

Senator KERRY. But if it's on an actuarially sound rate, actuarial, that means it is truly reflecting risk. That's what actuarial is. If it is truly reflecting risk, why shouldn't the private sector do it?

Mr. THOMPSON. Well because, you know, you ask a good question. The private sector hasn't stepped up at the moment, primarily because there's been a Government agency that was promulgated to provide this type of insurance.

Senator KERRY. Cheaper. But not, not true. It's not that it's providing that type of insurance, it's providing cheaper insurance. Specifically because the private sector, the market won't bear it. There's no market for it.

Senator MOSELEY-BRAUN. Mr. Chairman.

Senator KERRY. Yes.

Senator MOSELEY-BRAUN. If I may? Mr. Thompson, I think the point—and I'm, I want to congratulate my colleague really for raising this issue. I come from a State that's suffered some of the most, the worst flood damage we've seen in almost a century, and so this is obviously a very important subject.

I think the point that the Chairman raises is that if you start off with the notion that the free market will adjust and can handle issues like this, and a belief in free enterprise, then you start off with the notion that people take a risk when they build that is their own risk. That's point A. They make their own decisions, and that's a market decision, and so the market will determine where property values are high and property values are low, et cetera.

The next point is that where people make decisions because of the beauty or whatever it is of the area, that they want to locate in a particular location, that may not be desirable because of flood hazard, then that individual takes on also, as a part of that decision, the right and the responsibility, if they care to, to go out into the private market and buy insurance to guard against the risk that they know they've taken.

The third part is that now, because that insurance is so expensive, we on the Federal level have said, OK, we're going to create a pool, a taxpayer-sponsored pool, that'll help reduce the risk and really help you guard against your already—you know, we know that this is a bad decision that you've made already, we want to help you with that and provide an option to that expensive, private insurance.

But, as a condition, with taxpayers joining hands to help you, Mr. Property Owner who decides to live in the middle of Lake Michigan or whatever, you've got to abide by some standards. And those standards are set forth in this legislation.

Now, I guess I have a problem understanding where the logic gets mixed, and your questions back and forth with the Chairman really suggests to me that there's some gap in our basic understanding of what's going on here.

You know, we don't start off with the—it's like the old debate about whether health care was a right or a privilege. This is even less of an argument. It sounds like you're saying this is a right to have this kind of insurance and that the Federal Government has no right to give us any conditions on it. I don't understand that.

Mr. THOMPSON. No, ma'am. I'm not saying that you don't have the right to impose conditions. I'm just saying that the fund was intended to provide access for all those individuals——

Senator MOSELEY-BRAUN. Based on conditions.

Mr. THOMPSON. Right.

Senator MOSELEY-BRAUN. There have to be conditions on which the taxpayers weigh in in this situation, because we're talking about distorting a free market. That's what we're doing.

Senator KERRY. If I could just interpose, Mr. Thompson?

Mr. THOMPSON. Right.

Senator KERRY. I agree with what you just said, and this bill is true to that. Because for all existing housing, we provide that. Nobody loses their existing insurance. So even if you're within a 30-year erosion rate, we're going to say, hey, whatever decisions were made were made. We hold you harmless. We're going to insure you. But why should we build anew? Why should we expand the risk pool?

And also generally, I might add, anything that is within a 30-year erosion rate is in a fragile environmental status in terms of its usually barrier beach, it's that kind of status, or it's shoreline or one of the lakes or something. There's serious questions about the environmental wisdom of development in many of those areas.

Now, again, it's hard to understand why we'd want new construction versus holding people harmless. There's no diminishment in property value to the general community because existing structures will continue to get low-cost insurance.

The only question is a structure that doesn't even exist today. And that person can build if they decide they want to but they're going to assume the risk themselves.

Let me just point out to you also, your statement about where most of the damage has occurred is not entirely accurate, because the highest figures in percentage of distribution of losses are in fact coastal States. And the three highest, Texas—15.24 percent of all the losses from 1978 to 1992. Louisiana—16.49 percent. And Florida—8.13 percent. So you've got almost 40 percent of your losses contained in three States. When you look at the areas of the floodplain and the rivers, Iowa—.36 percent, Illinois—.318 percent, Missouri—3.23 percent, but significantly less than the coastal States.

Mr. THOMPSON. Well, Senator, my information on that is that there's no doubt those States have incurred a vast majority of loss, but I think the vast majority of that damage has been inland and not on the coastal areas.

But to get back, if I might add just quickly to the very good point that you made earlier, is that as you all know, from post-1975, post-FIRM, new construction has not been subsidized. I submit again that there is risk associated with building in the 30-year seaward or between the 30 and 60, but the actuarial rates today reflect that risk and the premiums are adjusted accordingly to, in essence, address that risk.

So that it's not jeopardizing the soundness of the fund and not mandating or necessitating that the Federal Government subsidize it because those rates are not subsidized. They're based upon the actuarial risk that's inherent within that development.

Senator KERRY. Let me just—again, we're going to look at this, and I don't want to belabor this particular point at this moment. But what's happening is that the folks in the outer area, who are paying, who are more distant from the erosion area, are subsidizing the people who are closer to it. And I'm informed that the current regional distribution of how that is done underscores even more the need for the mapping and for a more accurate determination of where those risks really ought to be borne, because it's not being accurately reflected in the current rate structure.

Now this is something we're going to continue obviously to take a look at. We haven't resolved it, and some Members of the committee have not yet resolved in their own minds on this issue. But I'm just really searching for the hard rationale of why there ought to be any Federal subsidy at all for building in an area that you know is going to vanish within the 30 years.

Now, again, we're allowing the building, providing they build something that's movable. So I mean, again, we're even being very generous in that. We're not saying you can't do it at all. We're just trying to do it in a way that minimizes the risk. And if it is movable, then you get the low-cost insurance.

Mr. THOMPSON. Senator, I appreciate certainly the good concern that you've expressed here, and it's a legitimate question, and it's something that we're very concerned with, and obviously we'd like to have an opportunity to discuss more with you as the bill develops. But again, in summary, we just feel like that the rates based on actuarial soundness would truly reflect the risk and would not be a subsidy.

The other point I want to make is that you appreciate the precious asset that a seashore is to respective communities, and many of them have devised techniques in which to mitigate and reduce the damage from erosion, whether they be structural in the form of seawalls and dikes, and non-structural in beach nourishment and this type of thing, as well as enhanced construction techniques.

So I think in addition to making sure that we've got rates that properly reflect the risk and therefore it's not a subsidy on the public fund, and second, as we develop these structural and non-structural mitigation techniques, that those will in fact go a long way toward serving to minimize the exposure to the risk.

Senator KERRY. I appreciate that. Maybe we can include some language in here that accurately defines what actuarial means and that might just leave it to the private sector, and then it'll be truly actuarial. But let's see how we come out on it. We'll work on it.

Mr. THOMPSON. Thanks for your good questions.

Senator KERRY. Thank you very much for your time and for your astute observations on those other areas. We appreciate it.

Let's go back here, if we can, Ms. Millemann, to the original order, and I will apologize for ducking out in the middle of your testimony. I think you understand. But Senator Moseley-Braun will continue to be here.

STATEMENT OF BETH MILLEMANN, EXECUTIVE DIRECTOR, COASTAL ALLIANCE, WASHINGTON, DC

Ms. MILLEMANN. Thank you for the opportunity to testify. My name is Beth Millemann, and I'm executive director of the Coastal Alliance, a national coalition of coastal and great lakes activists. And I'm presenting testimony today on behalf of not only the Coastal Alliance, but 85 environmental fishing and labor union organizations around the United States, including the United Auto Workers, and the Lake Michigan Federation in Chicago, and the Business and Professional People in the Public Interest of Chicago, as well as the Conservation Law Foundation in Boston.

I would like to deviate from my written testimony and address some of the issues that have been raised today by the different witness, and yesterday as well too in the hearing, and forgive me if it's rather schematic and I jump from point to point.

First of all, I was glad to hear the representative from the Home Builders supporting the conclusions that were reached by the National Research Council in its report called "Managing Coastal Erosion." Because, as you know, it was that report which was requisitioned by FEMA and paid for by FEMA that suggested that the best policy for managing coastal and great lakes erosion was to establish 30-year zones in which no more new Federal flood insurance would be available. And it was, of course, that conclusion reached by the National Academy of Sciences that helped propel the discussion about the need to prohibit new Federal flood insurance in these areas.

Second, there's been a great deal of conversation lately about actuarial versus prohibition. And for the environmental community and for the labor union community and for many fishing organizations, the prohibition on the involvement of the taxpayer in supporting construction which, as you've noted repeatedly, is going to be underwater is the absolute heart and soul of reform of the National Flood Insurance Program.

The National Academy of Sciences' study made it extremely clear that there is adequate scientific information and adequate policy information to implement erosion zones and knowledge to understand that when we talk about a 30-year erosion zone, we're talking about a place that, under the best scenario, will not disappear prior to 30 years. Under a more likely scenario of a nor'easter or a storm, half of it may disappear in a year.

We're talking about an area that's going to be underwater, and to continue to involve the taxpayer in that decision is not the purpose of the Flood Insurance Program.

Nor are the rates charged today actuarial. Mr. Riley, with the Federal Insurance Administration, testified before this committee 2 years ago, and was asked, by Senator Bob Graham, do you have an estimate of what the annual subsidy of this program is.

Mr. Riley responded, probably about $12,000, $13,000 a year for structures in erosion zones. So we are far from actuarial in what we charge today when the maximum costs in erosion zones is $1,200. You're talking about 10 percent of the true cost of actuarial.

So when the discussion occurs about should we go to actuarial, keep in mind you would be going to ratepayers and saying, guess what, your insurance policies get to go from $1,200 to $12,000 a year.

I think the recent experience that this Congress went through in trying to pass President Clinton's budget shows the unwillingness that many taxpayers have in having a major increase in the cost of their policies.

Our argument would be that it's much more fair, it's much more even-handed, and it's much more in keeping with the purposes of the program to say, from now on, no more taxpayer supported development.

Senator KERRY. Can I just interrupt you for a minute? When you say that, when you talk about those rates, is that what would be within a 30-year zone?

Ms. MILLEMANN. Yes.

Senator KERRY. How many structures are you talking about that fall into that category, do you know?

Ms. MILLEMANN. That was exactly Mr. Graham's question at the time. Mr. Riley responded, there has been no count. So I think again we don't know the number of structures.

Senator KERRY. Well let me ask you again another question, in fairness. Are there two meanings of "actuarial"? Is actuarial based on the certitude of the loss of that particular structure within the 30-year zone, and therefore you arrive at $12,000 a year? Or is actuarial sort of the average loss rate based on history within those zones of those types of structures notwithstanding the prediction? Do you see what I'm saying?

Ms. MILLEMANN. Yes.

Senator KERRY. So that based on what they've really been losing, they're actuarially sound to pay out the amount of damage versus the amount of loss that is actually occurring?

Ms. MILLEMANN. Yes.

Senator KERRY. So can you answer that?

Ms. MILLEMANN. Well, the representative from FEMA this morning talked about the fact that there's really no assessment that's been done by FEMA of how much they're losing right now in paying benefits for erosion since the flood policies now don't cover the threats posed by erosion and aren't charging rates that reflect the risks from erosion. So it's really, no one really knows how much is being paid now for a benefit that the recipient is not being charged for. And I think that accounts for the deviation.

Getting back to some of the other issues that have been raised today and yesterday, about some of the provisions of the bill.

One of the other explicit mandates of the flood insurance program not created by environmental groups but created by Congress in 1968, when it created the program, was the following mandate: That is was the purpose of the Flood Insurance Program to encourage State and local governments in an appropriate land use adjustments to constrict the development of land exposed to hazards.

When you talk about a prohibition on new Federal flood insurance, you're talking about an activity that is directly in keeping with the tenets of the Flood Insurance Program. It would be directly complementary to the mandate and objective that Congress gave this program in 1968 when it said, this program is to help communities guide development out of the flood-prone areas. And at a minimum, it is to remove the taxpayers' involvement in development in those areas.

So a prohibition on Federal flood insurance is precisely in keeping with the major objectives of the Flood Insurance Program, which was not to make insurance expensive in hazard areas, it was to make development get out of hazard areas, so that the taxpayer would be protected, but also human lives in the recognition that people are very vulnerable to acts of nature, the closer they are to the water's edge.

Last, it's important to keep in mind, when you talk about the 30-year erosion zone, I think that term can be somewhat off-putting. People can think that, boy, 30 years is several hundred miles. A 30-year erosion zone for most of the eroding beaches, for example, on the Atlantic coast, would be no longer than the length of this room. We're talking about an area that may be 50 feet or 60 feet from the water's edge. And the taxpayer is involved now in supporting construction in that area.

It's ludicrous. We're talking about a zone that if there's no Federal flood insurance available there, the city of Chicago's not going to withdraw from the Flood Insurance Program because it can't get flood insurance in an area the size of this room, nor is the city of Ocean City or Boston or any of the other shore front cities in this program. They're not going to abandon floodplain management, they're not going to run from the program.

They're going to say, well, we can't get new Federal flood insurance here. If development in that area is important enough to us, as a community, we'll make community grants. We'll deal with it as a community. But we're talking again about an area that's a small, small, small percentage of what the total shorefront community has in terms of its property area.

So in conclusion, I would just like to reiterate that the conservation community, that United Auto Workers, fishing organizations strongly support the prohibition on new Federal flood insurance in erosion zones because of the environmental benefits, yes. But also because it would help the Flood Insurance Program meet the mandate Congress gave it 25 years ago which it has abjectly failed to do, which is to guide that new construction out of these taxpayer dollar-sucking areas.

Thank you.

Senator KERRY. Thank you very much.

Kathleen.

STATEMENT OF KATHLEEN M. McCAULEY, SECRETARY, MARSHFIELD COASTAL ADVISORY COMMITTEE, MARSHFIELD, MA

Ms. McCAULEY. Mr. Chairman, I hope you can spare 5 minutes to hear my whole testimony.

My name is Kathleen McCauley. I am testifying on behalf of the Marshfield Coastal Advisory Committee in Massachusetts. Our testimony has been endorsed by coastal resident associations from Massachusetts to Florida. I am honored to be here.

I am an appointed member of the Marshfield Coastal Advisory Committee. We are responsible for the administration of the National Flood Insurance Program's community ratings system. Our selectmen appointed our committee because 61 percent of Marshfield's tax base is in the floodplain. We support efforts to improve the National Flood Insurance Program.

We oppose S. 1405 because it establishes erosion zones that would devastate the economic base of communities all around the country. Erosion zones will immediately cause the value of real estate along the Nation's oceans, lakes, and rivers to plummet. The effect of plummeting real estate values will be the erosion of local tax bases which provide funding for schools, fire, and police.

Marshfield's Board of Selectmen are so convinced of the damage that erosion zones will have on our tax base, that they have unanimously voted a resolution opposing S. 1405. We have submitted this resolution with our written testimony.

Erosion zones will curtail new construction through denial of flood insurance. Existing homes will lose their value by being included in 30- and 60-year erosion zones. The message is, this home won't be here in 30 or 60 years.

In most cases, the message will be wrong. Only actual erosion can be measured. Future erosion or accretion, for that matter, over 30 or 60 years cannot be predicted when the weatherman can't predict next week's weather. Experts disagree on the feasibility of predicting erosion over 10 years, never mind 60. And how do you measure actual erosion?

Every flood insurance rate map references a fixed baseline reference feature. These features are medallions set in telephone poles, seawalls, or foundations. They are used to measure distances and elevations. S. 1405 does not restrict the measuring of erosion to a fixed baseline reference feature. Erosion measured from a nonfixed baseline reference feature will have homeowners and businessmen guessing, where's the erosion line today? Am I in it, or am I out of it?

Proponents of S. 1405 estimate that 70 percent of the Nation's shoreline is eroding. If their method is defective, consider the magnitude of their mistake. Errors and injustices will haunt residents. Consider the possible effect in Marshfield, MA, where 11 percent of the tax revenues are generated within 1,000 feet of our seawall.

The cost of mapping and measuring erosion zones, together with grants to communities and States for mitigation, will increase the current costs of running the National Flood Insurance Program by 50 percent.

We estimate claims paid by the National Flood Insurance Program to people living on what the U.S. Army Corps of Engineers calls the "critically eroding coastline" accounted for under $8 million in losses over a 15-year period. That's about $500,000 a year.

This bill would authorize the Federal Insurance Administration to spend more than $25 million over just 5 years for mapping and studies of erosion zones. That's $5 million a year. Obviously this is not a cost beneficial way to spend policyholder premiums. Erosion zones will not only hurt communities but hurt the NFIP fund.

As NFIP policyholders, we support efforts to assure the soundness of the fund. To that end, we recommend the following changes to S. 1405.

First, mortgage structures within the entire floodplain should be required to insure for flood loss. At present, only a portion of the floodplain, the special flood hazard area, falls under the mandatory flood insurance category.

This is significant because one-third of NFIP losses occur where flood insurance is not required. Unfortunately, we have seen an example of undue financial loss in the great flood of 1993. Much of this loss might have been insured if mandatory coverage had extended to the entire floodplain.

S. 1405 provides the opportunity to broaden the insurance base. If your property is in any part of the floodplain, the National Flood Insurance should be required.

Second, the definition of a "repetitive loss structure" should be expanded. In S. 1405, a property could suffer losses totalling 100 percent of the value of the structure over just 5 years, and still not meet the definition of repetitive loss. We have recommended an expanded definition in our written testimony. However, we'd like to let you know that a unique problem does exist for coastal condominium complexes that become "repetitive loss properties." In most cases, these buildings will not be able to be elevated to meet FEMA regulations, thereby losing their affordable flood insurance. The loss of affordable flood insurance for condominiums, particularly in Florida, is of particular concern to our Nation's retirees.

We support section 602 which provides for additional insurance for flood victims who must comply with expensive FEMA building regulations when rebuilding after a disaster. However, it is critical that, with this new coverage, insurance premiums remain affordable.

My husband and I are just like our friends and neighbors. We are not rich, but middle class. I am recently unemployed and despite 20 years of service, my husband must be concerned with company downsizing. Our home, the only one that we own, represents our financial security. The same is true for my parents who live two doors away, as well as my sister in Florida. The well-being of my entire family, as well as the economic strength of our communities, is dependent on the value of our homes.

I have owned my home through Hurricane Bob, the 1991 Halloween Storm, and the Blizzard of 1992. I have not suffered a flood loss. I am one of millions who pay into the fund, saving other taxpayers the cost of Federal disaster assistance. Affordable flood insurance has provided essential financial security and protection from flood disasters for me, my family, and neighbors. It has allowed equal access to the coast for middle class by providing affordable flood insurance. This bill will cause existing flood insurance to skyrocket, thereby pricing out the middle class to the coast.

I would ask you not to devalue our homes and destroy our local economies by passing S. 1405. It would be a shame for Congress to make changes to the National Flood Insurance Program that would result in harming the very ones it had sought to protect.

Finally, Congress can substantially improve the National Flood Insurance Program if the legislation was modified to, most importantly: Eliminate erosion zones. Expand the insurance base to include structures in the entire floodplain. Expand the repetitive loss definition. And assure that premiums remain affordable.

This concludes my testimony. We may want to supplement the record later this week.

Thank you for the opportunity to present the concerns of coastal residents and their communities.

Ms. McCAULEY. At this time, I'd like to just highlight briefly, probably 1 minute, the testimony of Dr. Peter Fallon who represents the North Beach Civic Association in Vero Beach, FL.

Senator KERRY. Well, I can't let you do that because you've already gone over time and he's not here. But he will have his testimony made fully part of the record. And I'm not trying to avoid that. I just want to be fair to everybody. I also want to have a moment to comment, because I stayed not 5 minutes after your testimony, I stayed 10.

Ms. McCAULEY. Thank you.

Senator KERRY. Which is double the amount of time.

Let me just comment very quickly. You did not get to the town meeting, I take it, that I held in Falmouth?

Ms. McCAULEY. No, I did not. I had to work.

Senator KERRY. I regret that you didn't because many Marshfield residents came and they made every argument that you just made at the beginning of the meeting.

Once they understood the bill, after we had talked about it, many of them left in a total state of saying, humph, this isn't as bad as we thought it was. This is very different from what we thought it was. And I really think it's unfortunate that you weren't able to be part of that, or that we haven't had a chance to talk about it, because I really think there is a huge gap between what you described as the sort of disastrous downsides of this, and reality.

Reality is that not one of your homes is going to see an increase in a premium. You're going to probably see decreases because there will be more participants, a larger risk pool, and therefore less need to charge you as much because you're bearing the burden right now of paying for a lot of folks who aren't.

Ms. McCAULEY. Then I misunderstood the testimony of a fellow here this morning from FEMA who said that policyholder paying $409 pre-FIRM home in an erosion zone without even including the rising cost of being in an erosion zone, would see that bill go up to $1,000 something and then once they determine the erosion zones, those bills would go up further.

Senator KERRY. They're—not in the long-term properties would not go up. In the short term, it is conceivable that there would be a few properties that would see an increase, but very few, very,

very few, because there are very few properties that would fall into that kind of short-term catastrophic capacity.

Second, the mapping capacity is absolutely adequate, and we don't specify fixed point or non-fixed point. We want to leave it up to the experts in each of the States to determine what their best scientific capacity is for accurately reflecting their erosion zone. They may choose a combination of fixed point, non-fixed point.

Ms. McCauley. In Massachusetts, State Coastal Zone Management has already determined that they will go to the 1978 Mean High Tide. This of course would include the blizzard of 1978, which would tend to include the most possible land, real estate and homes possible in these erosion zones. We've already looked at the maps supplied to us by Coastal Zone Management.

Senator Kerry. But they were at this meeting incidentally, and they also——

Ms. McCauley. I know that.

Senator Kerry. [continuing] discussed that, and they are not in fact, that is not strictly speaking the way they're going to do it.

But in addition to that, I should point out to you that what you're trying to avoid here, in a sense, is the reality of an erosion zone. I mean, you can't have a legitimate real estate market in which people are transacting where you hide the truth from people. I mean, if the reality is, this is an erosion zone and this home may or may not be here, that's disclosure. I mean that's something people have to know.

Ms. McCauley. Right.

Senator Kerry. You can't hide that. You can't ask us to hide that.

Ms. McCauley. I agree, Senator, and I don't think that we can justify Federal insurance for new construction in 30-year erosion zones, but how we determine those erosion zones is in question.

Senator Kerry. Right. And I think this bill sets out the most scientifically reasonable and accepted standards for determining that erosion zone.

Ms. McCauley. But it's different from State to State.

Senator Kerry. Let me go a step further. In Marshfield particularly, that wall is in need of significant upkeep and repair. That is the mitigation against the erosion. If Marshfield doesn't want to take part in this, then that seawall may not become the recipient of grant money for the mitigation that comes through this premium process.

Now if all those folks down there think they're better off without having federally supported flood insurance, then maybe that's the road they want to go.

Ms. McCauley. Well, unfortunately, we'd have to make the choice. What we're saying is we're not confident in how the erosion zones are going to be delineated. And you, yourself, have said that they will be appropriately and accurately designated, which means if you're in a 30-year erosion zone, that in 30 years all those houses would be gone?

Senator Kerry. Hold on one sec. You have to, first of all, I know of no house in Marshfield that to my knowledge falls into that kind of jeopardy right now. You might have one or two, but I don't know. But let me come back to this.

There isn't one house that is going to lose insurance under this bill. They all keep federally subsidized, low-cost insurance. And in point of fact, many of them I believe, and I think we can show this, will be far better off as a consequence of this bill, because there'll be more money for mitigation. The seawall in Marshfield will have a better chance of getting money that today it can't get, which will mitigate against the potential of that damage so that you won't have an actuarial risk.

Ms. McCAULEY. Is there a way of doing that, Senator, without establishment of erosion zones? I think that possibly there is. Clarifying the community rating system of NFIP is a great idea. You could make erosion site identification and erosion mitigation part of the CRS as an activity. And this does not penalize communities and homeowners by being included in inaccurate erosion zones. Instead, it makes the community a participant in sighting where the erosion problems are in their——

Senator KERRY. Let me do this, because I'm being unfair to Senator Moseley-Braun who's agreed to stay here for a little longer, and I don't want to—everybody's got to get their testimony in.

I know that other witnesses can address, and will address the point you've just raised. So rather than have me sit here and do it now, let me ask them to do what I know they will do and can do, and I think that'll be a good dialog in understanding this. I just want to leave you understanding that we've bent over backward here with significant compromises specifically to address the needs of Marshfield and the other coastal communities so that no property will lose value.

Insurance continues on all existing structures. All existing structures will maintain federally supported, subsidized insurance. We recognize the middle income, average taxpayer needs that need to be served here, and we're not looking to raise those rates. We're in fact trying to reduce the cost by sharing the burden more broadly and providing more money for mitigation which will reduce the risk.

And I believe that I can turn to Marshfield and say I'm going to guarantee you that that seawall is going to be in the top rate condition to withstand storms so that the probability of damage to the inside area it's now protecting is minimized, which it isn't today, because it's in need of repairs.

Ms. McCAULEY. That's true.

Senator KERRY. And the money isn't there.

Ms. McCAULEY. That's true.

Senator KERRY. So we can provide the money.

Ms. McCAULEY. Senator, I think the bill has a lot to say for it, and it does do a lot of things and it does grandfather existing homes. Our concern is the value of those homes.

Senator KERRY. I understand, and I think we're going to address that, and we'll continue to address it, and I promise you no one's going to run roughshod over that.

Ms. McCAULEY. Thank you.

Senator KERRY. Thank you. Appreciate it.

Thank you, Senator Braun, for chairing.

Senator MOSELEY-BRAUN. Certainly.

Ms. Quinn.

STATEMENT OF REBECCA QUINN, LEGISLATIVE OFFICER, ASSOCIATION OF STATE FLOOD PLAIN MANAGERS, ANNAPOLIS, MD

Ms. QUINN. Thank you.

I'm here today on behalf of the Association of State Flood Plain Managers. I am also a State floodplain manager for the State of Maryland. And in that capacity, I work every day with our communities, both inland and coastal communities. We're here. Our number one message is to urge that this legislation move forward quickly.

We've learned from Hurricanes Andrew and—and the lesson once again came so clear in the floods in the Midwest that our mitigation tools need to be honed. And we believe that this bill will be an important component of the National Disaster Management Mitigation Strategy.

I think before I get to my prepared comments, I have just a few bullets on some of the issues that have been raised.

I believe the question needs to be asked, what is the objective of identifying the erosion hazard and any subsequent requirements, whatever they may be. Obviously, the answer is a function of the stated objective.

I've heard, protect the fund, which is supported by policyholders. I've heard protect taxpayers. I've also heard, not as loudly, identify and manage the risk. Erosion is a risk that is not created by Government. It is not created by the Flood Insurance Program. It is not created by a line on a map. The risk is there regardless. It's there whether we choose to ignore it or whether we choose to acknowledge it.

What I believe we are attempting to do is part of Government's fundamental role to fulfill hazard management and public safety, especially at the local level.

Erosion affects land values. Management does not affect land values. If you ignore the erosion, that does not improve the value of land or those properties.

Taxpayers do support disaster assistance. And I have to raise, in terms of concerns about the taxpayer subsidy of this program, is the unknown amount of subsidy that there exists in some of the disaster programs and also the casualty loss deduction for taxes. Uninsured losses can be deducted, and I think that a good objective for this program in protecting, not the program, but protecting citizens, is to make sure that those at risk have insurance.

I'd like now to comment on what we, the Association of State and Local Flood Plain Managers, feel is the heart and soul of this bill, and I'm pleased to say doesn't appear to be a very controversial issue. And that has to do with the mitigation provisions.

We believe the most far-reaching components are in title IV and section 602. You've heard about a grant program, it is a very modest grant program, capped at $20 million a year, to provide both technical and financial assistance to State and local governments.

This program is not intended to solve all floodplain problems, but it is intended to be proactive and to encourage communities who have learned the hard way that there are feasible and cost-effective solutions that can be identified through planning process.

We know that communities in the Midwest are looking at acquisition and relocation as very viable options. And this grant program, albeit small, will be one piece in the overall strategy to support those communities, maintain the integrity of their communities, maintain their tax base.

With regard to section 602, I emphasize the far-reaching impacts because it creates an insurance base mechanism that will be reactive to future floods. But by including the cost of rebuilding to code in the coverage and factoring it into the premiums that are paid, this mitigation component will, in effect, be self-funding. It will not be taxpayer supported.

It also has the potential to address large numbers of buildings which a grant program would be unable to do in the aftermath of major flooding.

Our only recommendation is to look carefully at the eligibility criterion to make sure that we have flexibility to deal with properties that do have cost effective solutions that are in the best interests of the program.

It's important to sound a note of caution about the benefits of the mitigation initiatives. I know from Maryland's mitigation program that the true benefits will be measured only when the next flood occurs. It's not on the sunny day.

After the next flood, when homes and businesses are not damaged and people are not in line at the disaster assistance center, and jobs are allowed to continue, then we will know successes. Unfortunately, in my profession, it's very difficult to measure damages avoided.

We did not see our newspapers and the press focus on the success stories in the Midwest, houses that were properly elevated. It just didn't pluck the heartstrings. And yet that's so fundamental to this program. We do have successes. Protected citizens, though, who have achieved mitigation will remember, even if the newspapers don't see a flood without victims as a news story.

We very much support the authorization of the community ratings system and the acknowledgment of erosion management for additional credit.

The Association's membership, which represents over 18,000 State and local floodplain managers, including our twelve State and regional chapters, stand ready to work with the Federal Emergency Management on development of regulations to implement this legislation.

Thank you for the opportunity, and I'd be pleased to answer any questions.

Senator MOSELEY-BRAUN. Thank you very much, Ms. Quinn.

I think the format, in order to make certain that everyone has an opportunity to testify, is that we will take all the testimony. Then, if there is time remaining, we will entertain a dialog. So with that, I don't know if Ms. Campbell-White or Mr. Kehoe is next.

Mr. KEHOE. I think I'm next.

Senator MOSELEY-BRAUN. Mr. Kehoe.

STATEMENT OF CARY KEHOE, ON BEHALF OF CHRISTOPHE TULOU, SECRETARY, DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, DOVER, DE

Mr. KEHOE. I'm Cary Kehoe. I'm legislative counsel for the Coastal States Organization, an association of Coastal States and territories promoting their interests in coastal management. I'm appearing today in place of Christophe Tulou, the Secretary of Natural Resources for the State of Delaware who, unfortunately, was unable to attend today's hearing, and I extend his regrets.

His written statement has already been submitted to the record, and I have only a few brief remarks.

It was 6 years ago that I was a legal intern at CSO, my first day on the job. Our director at that time came up to me and dropped a file in my lap and said, this is a file on the National Flood Insurance Program. We're hearing from coastal zone managers across the country that this program is encouraging development of hazardous coastal areas. See what you can find out about it.

It's been 6 years since then. At the time we started, basically, we only had anecdotal evidence about the program. But in that 6 years, I think a very strong record has been documented of the problems of this program.

We've seen the flooding in the Midwest, and I don't think there's any question that there is a problem seeing the great number of uninsured properties, there is a problem with under compliance, with the NFIP mandatory purchase requirement.

We've seen Hurricane Andrew and we've seen the great number of structures that cannot afford with the flood insurance benefits to rebuild their structures up to code.

We see that the program's been unable to break the cycle there, and we've seen the fluctuations of the great lake levels in the late 1980's and the resulting erosion. And the inability of this program to address the problem of erosion to meet its statutory responsibilities that were mandated in 1973 to come to terms with erosion risk.

Most of the last 6 years, I've been involved in debating the question of erosion management of the National Flood Insurance Program. If I had offered this bill, it wouldn't look like S. 1405. It would have much stronger erosion management provisions. Yet, the reason I like this bill is because it doesn't have erosion management provisions in it.

Even though I would have preferred a stronger bill, the beauty of this bill is that it's clean. Unlike previous versions of the flood insurance legislation that we saw in the last Congress, this bill puts aside a lot of the extraneous questions, such as a 10-year erosion zone, set backs, cancellation of insurance, the effect cancellation would have on mortgage availability.

S. 1405 focuses on a very narrow and singular question. And that is, what is the propriety of the Federal Government in insuring new construction whose foundations will be undermined in less time than it requires to repay a 30-year mortgage.

What's the public purpose being served by underwriting new development in eroding areas where the risk of loss is a certainty, where structure is essentially a loss in progress from the day construction is completed?

The common sense embodied in this legislation leaves very little room for argument. I think Ms. Quinn very adequately addressed many of the concerns raised by Ms. McCauley, but I would like to point out, this program is 25 years old.

If you listen to some of the doom and gloom predictions about what the effect of this bill is, you would think that but for this program, there would never have been any development along our coasts, there never would have been any growth along our coasts, that all of our coastal communities would be in a state of decay.

But those communities were there back in 1968, when this program was enacted, and they'll be there after this legislation is enacted. They'll make the changes that they need to make, and it won't have a devastating effect.

I'd like to point out to Ms. McCauley that the States of Michigan, North Carolina, and South Carolina, they've gone far beyond what this bill proposes to do. They don't deny insurance in erosion areas, in a narrow area that Ms. Millemann has pointed out, an area that's probably a little longer than this room. They say you can't build altogether. And the effect on the tax base, there's never been any demonstrated effect on the tax base. There's never been any demonstrated decline.

From what I can see, there's one outstanding argument still here before us, and that is whether to go with actuarial rates or the prohibition on flood insurance.

I think Senator Kerry has very eloquently expounded a logic for restricting the availability of insurance for new construction in erosion hazard areas, and I'd just like to add a few points.

One is we heard Don Collins of the Federal Insurance Administration say this morning that this represents a fundamental change. It doesn't.

Since the inception of the NFIP, insurance hasn't been available in certain areas, such as you can't get insurance for a structure placed in a flood way. You can't get insurance for a structure placed on open water. Since 1983, you can't get insurance for a structure that's placed in a unit of the Coastal Barrier Resources System. And the impact has been very negligible in those areas, and I don't think they can demonstrate any negative impact.

I see my time has expired, and I'd be glad to answer any further questions that you have.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Kehoe.

Ms. Campbell-White.

STATEMENT OF PAT CAMPBELL-WHITE, VICE CHAIRPERSON OF THE PUBLIC POLICY COMMITTEE, NATIONAL ASSOCIATION OF REALTORS, WASHINGTON, DC

Ms. CAMPBELL-WHITE. Senator, thank you very much. I appreciate your time, and it's nice to have you here today. It's a pleasure to see you for the first time.

My name is Pat Campbell-White, and I am the 1993 vice chairperson of the National Association of Realtors, Public Policy Coordinating Committee, and former Environmental Chairman of our Association. I would like to summarize my remarks rather quickly for you, and ask that the formal testimony be submitted for the record.

As a resident of an Atlantic Coast beach community, I'm quite aware of the hazards of living in high-hurricane, high-risk, high-erosion areas. Rehoboth Beach in fact is 2½ hours away, and is the Nation's summer capital. As a realtor and a property owner and a taxpayer, I've worked with this particular program since its inception, and the entire time I've been active in the real estate business.

I have to compliment the Senators and all of you, and especially Senator Kerry for the work that has gone in on this legislation over the past 2 years. I feel like it's been half my life time but we've been there through that process, and we have seen some real progress to get to the point where we are with the reauthorization of the National Flood Insurance Program.

The product in S. 1405 that comes before us today is much improved over where we started, and has resulted in something that's quite unusual for Washington, and I saw it on your face as you were sitting there and frowning and trying to deal with. Actually some good portion of this bill makes common sense.

Please don't take that as a personal affront, but it's actually a product of Washington that borders on common sense and therefore results in the support, on behalf of the National Association of Realtors, for the National Flood Insurance Reform Act of 1993.

And, again, thank you for all of your efforts. We still have concerns. There's no such thing as a perfect bill. Yes, we don't know, and no one has been able to come before this committee today or yesterday to give us an accurate indication of how many homes, how many coastal communities and so forth are involved. Everything is somebody's best guess. But the bill's going to give us an opportunity to address that in the near term.

Yes, we would rather see more actuarial-based risk-based proposals with coverage for all properties but we realize that that doesn't make common sense. However, this bill presents a fair and equitable approach and it sets it forth that will not unduly diminish or unduly restrict a private property owner's rights. Senator Kerry said that in his opening remarks yesterday, and that's very key.

The previous versions of this legislation presented three major stumbling blocks for our Association.

The no build aspects of 10-, 30-, and 60-year erosion zones. And Mr. Kehoe, if you think that a Federal flood insurance program is going to be a problem to the American taxpayer, try drawing a line in the sand and saying, don't build here. Because we have U.S. Supreme Court cases that are going to put a bigger dent in my pocket as a taxpayer than protecting health and human safety with good construction standards where the taxpayer accepting the risks and going out and buying private flood insurance without getting that Federal subsidy.

So we didn't like those no build aspects of some of the previous legislation that had 10-, 30-, and 60-year no build zones, or minimization of building zones.

Now an owner wishing to build just can't rely on a Federal subsidy to do it, and they accept the personal risk, where do they obtain private flood insurance?

I have sold properties in coastal barrier resource systems where Federal flood insurance was not available, and the buyers went out and bought it. People are going to live where they want to live.

I made that comment 2 to 3, maybe 4—like I said, it feels like forever—years ago when testifying on expansion of the coastal barrier resource system. I have sold property where Federal flood insurance was not available. The homebuyer accepted the risk and was willing to go pay what he knew up front.

While we will never argue, and have never argued that Federal flood insurance is a constitutional right, we have and always will stand steadfast on the constitutional right for a property owner to utilize their property, or if denied that right, to be compensated for that loss of use.

Structures ineligible for the Federal program now just go get private flood insurance. And it is available out there. It's not cheap, but that isn't the intent of the Federal program to provide cheap insurance. And again, Senator Kerry stressed that real well in his opening remarks yesterday.

Our second concern in the past has been lack of public hearings, no appeal process, no notification process to property owners. You've listened and you have instituted those provisions in this bill, and we strongly support those provisions, and thank you for addressing them.

Our other concern was that the bill bordered on attempting to be a Federal land grab. We want zoning and issues of a local nature to be handled within our communities, within our counties, where we can have input with our public officials.

We do support the manner in which the increased participation of the fund is directed by the escrowing mechanism with the lenders. And yes, while we, as the National Association of Realtors, could have proposed some other changes and looked forward to continued working on this issue, we do come here today in basic support of Senate 1405.

And thank you, Senator.

Senator MOSELEY-BRAUN. Thank you very much.

Just for my own edification, I'd like to ask two questions, and maybe you can weigh in on this quickly because we're already 5 minutes over time.

One is the issue of the comprehensive strategy for disaster relief and flood insurance. How do you see those two pieces coming together. And the second is whether or not there is congruence between the Federal standards for disaster relief and the standards for insurance that are in this bill. That is to say, to what extent are the standards for disaster relief different from the standards for insurance that might mitigate against someone getting private insurance.

Ms. QUINN. Senator, I'm not sure that I can speak to the specifics of the standards of eligibility for someone who has been flooded and whether they do or do not qualify for disaster assistance.

I know that if they have insurance, they virtually have no cause to go to a disaster assistance center to seek assistance, other than perhaps temporary housing while they are restoring their home.

If someone receives disaster assistance, they are required to purchase flood insurance if their home is in a floodplain, a designated floodplain. Beyond that, I don't think there is a direct nexus between the two. There's been some discussion about it, but I do know that one of the primary concerns of disaster assistance centers is moving people through quickly, getting the assistance in their hands. And anything that would delay that process is going to raise some other concerns about the effectiveness of that delivery process.

Senator MOSELEY-BRAUN. OK.

Ms. MCCAULEY. Senator, I could add some information to that.

As I understand it, a homeowner with flood insurance is not eligible for Federal assistance grants. Those are given to people without flood insurance. A homeowner with flood insurance on a second home, the second home is, there are some limitations on the amount of insurance.

With regard to SBA loans, I think there's some correlation between insurance and SBA loans.

To get an SBA loan, if you don't have insurance, you will be required to take out insurance after receiving a SBA loan. So in several areas, there is some correlation between flood insurance and disaster assistance. The idea being, purchase the flood insurance and save the taxpayer dollars and flood disaster assistance later.

Senator MOSELEY-BRAUN. I think Ms. Quinn or Ms. Millemann talked about the comprehensive strategy.

Do you have anything to add in that regard?

Ms. QUINN. The Federal Emergency Management Agency's director, James Lee Witt, has identified mitigation as one of his key priorities in the overall strategy that the Nation, and that's not just FEMA, but many other agencies that are in some way related to management of flood hazard areas as well as providing financial assistance, that we, as a whole, need to look at and develop and refine a mitigation strategy for the Nation. And I believe he will take a leadership role in that.

It's obvious to us that the Flood Insurance Program, especially as modified by this legislation, will be where the rubber meets the road for most homeowners. We're not talking about grand new schemes to build more dams and levies; we're talking about making sure that people's homes and their lives can be either protected or returned quickly after a flood.

Ms. MILLEMANN. Senator, one other mention here too.

The Office of Management and Budget and the White House Office on Environmental Protection sent out a memorandum after the Midwest floods to all sorts of different agencies; the Army Corps of Engineers, FEMA, Agriculture, all across the board, directing them to really consider the overall goal of protecting the environmental and natural resource values in response to the flooding.

They talked about some ways to look at areas that maybe you could maintain open space as an area that could buffer those flood waters in the future. You can look at other ways, other than just a construction response to the floods in the Midwest. And it's another way that I think the S. 1405 is very analogous to what the administration is looking at in terms of its response to the floods, not only in emphasizing those same values, but in establishing the mitigation grants program, which would help the flooded communities along the Mississippi deal with the aftermath.

Senator MOSELEY-BRAUN. All right.

Thank you very much for your testimony this afternoon.

[Whereupon, at 12:11 p.m., Wednesday, September 15, 1993, the committee was recessed, subject to call of the chair.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

OPENING STATEMENT OF SENATOR JOHN F. KERRY

Good afternoon. Today, as we consider the National Flood Insurance Program and S. 1405, The National Flood Insurance Reform Act of 1993, I feel a bit like the doctor who has given out a prescription after having made his diagnosis. I'm still not sure the patient is going to take the medicine. But I do believe if he does, we can restore the patient—the Federal Flood Insurance Program—to good health.

The problems with the NFIP have been known for a long time. We have been warned, on numerous occasions, that the flood insurance fund was depleted, and in danger of requiring funds from the Treasury. Critics have shown that compliance with flood insurance purchase requirements is poor and in need of reform. Witness testimony from past hearings have clearly proven that mitigation and loss reduction is an afterthought in the NFIP.

Massive summer flooding of the Mississippi and Missouri rivers has left the flood insurance fund with a current deficit of at least $35 million threatening to increase the Federal budget deficit and putting the taxpayers at risk.

The fund was supposed not to add to the taxpayers burden, but to end the practice of the government paying for disaster relief in areas damaged, often repeatedly, by floods. In exchange for flood insurance, communities were required to plan and implement measures to limit and constrict development in flood-prone areas to reduce future flood losses. Unfortunately, this "*quid pro quo*" has never been adequately carried out. The liability in floodplains is far worse now than when the NFIP was created in 1968. Significant growth in development along the Nation's coasts and rivers—fostered to some extent by the subsidy of guaranteed Federal flood insurance—has put thousands of new buildings at high risk, greatly increasing the risk exposure of the NFIP.

We have worked hard in S. 1405 to address the problems in the fund. But rather than elaborating on specific provisions of S. 1405, I would like to briefly summarize the major thrusts of its reform strategy.

Ensuring compliance by lenders with flood insurance purchase requirements is essential towards increasing the NFIP risk pool. Only 2.4 million of the estimated 11 million structures in flood hazard areas are covered by flood insurance. This is a compliance rate of 19 percent in what is supposed to be a mandatory requirement for all Federally-insured and Federally-guaranteed mortgages, as well as all mortgages purchased by government sponsored enterprises in the regulated floodplains of participating communities. While everyone from banks to mortgage brokers to Fannie and Freddie say they have secured full compliance, its clear that millions of the 8.6 million uninsured properties have mortgages and are required to have the insurance and just don't.

S. 1405 provides a streamlined strategy to improve compliance without burdensome paperwork. It would require Federally-regulated lenders to escrow for flood insurance premiums, and create a standardized flood hazard determination form to provide a five-year "safe harbor," giving lenders additional incentives to make sure that flood insurance is purchased at origination and maintained for the life of the mortgage.

As I mentioned earlier, mitigation has been an afterthought in the NFIP. I am glad to hear that FEMA has adopted a new attitude towards mitigation, and will be interested to hear today from FEMA's new Director, James Lee Witt, regarding his views on the mitigation provisions in S. 1405.

Risk reduction through mitigation is a proven, cost-effective method to reduce future flood losses and is as equally important as increased participation towards a balanced reform of the NFIP. This legislation would provide additional incentives to encourage States and communities to implement mitigation activities in order to reduce future flood losses—such as mitigation assistance grants and authorization of the Community Rating System—and would direct FEMA to improve and expand its identification of floodplain hazards.

Of course, mitigation will only be effective if the hazards are clearly known and identified. S. 1405 would require FEMA finally to identify erosion hazard areas and to incorporate this destructive hazard into NFIP rate making. Also, since numerous critics have complained about the accuracy and quality of flood insurance rate maps, provisions are included to improve the accuracy and quality of flood insurance rate maps.

Obviously, any changes in a program such as the NFIP will be controversial. But that is no excuse for Congress to not act. The legislation before the committee today has been shaped along a continuum of analysis and refinement which I began three years ago. The public reaction to S. 1405 has been generally positive, even by critics who had previously opposed flood insurance reform. I believe that we have reached an equitable balance that would restore public accountability and personal responsibility to the NFIP. Over the next few weeks, I will be seeking a mark-up on this legislation in the committee and will seek to bring the bill to the Senate floor this session of the Congress.

Before I open this hearing up to my colleagues present here today so that they have a chance to make their statements, I would be remiss if I did not mention the significant contributions that the ranking minority member Senator D'Amato has brought to this process. Senator D'Amato and his staff have made many positive suggestions that have clarified and improved this legislation. Some differences of opinion remain—in particular, the limitation on availability of flood insurance for new construction in erosion hazard areas. We hope that this hearing will help assist the resolution of these differences.

I also would like to thank today's witnesses for agreeing to testify and share your respective expertise. Such input in the past has been extremely beneficial, and I look forward to hearing from you today regarding your suggestions on how S. 1405 might be appropriately refined and improved. We look forward to your testimony.

STATEMENT OF SENATOR PAUL S. SARBANES

CHAIRMAN, HOUSING SUBCOMMITTEE

Good Afternoon. We are here today to reexamine the National Flood Insurance Program, an important program that has come under much scrutiny over the past couple of years. With the devastating hurricanes in recent years and especially now with this summers flooding in the Midwest, its time to reassess this program.

The National Flood Insurance Reform Act of 1993, S. 1405, works to address the major concerns of the flood insurance program including the actuarial soundness of the fund, the lack of compliance, and the treatment of the erosion-prone areas.

When the program was first authorized in 1968, it was intended to be a self-funding insurance resource that could pay property damage costs resulting from severe flooding and would reduce the need for disaster assistance. The program has been amended several times and has largely been successful, but problems have arisen throughout the last few years that have raised questions about the program.

One of the criticisms is the threat of the fiscal soundness of the insurance fund. With over $200 billion of insurance in force, $160 million in reserves, and $60 million cash-on-hand, and the threat of a major hurricane cycle upon us, we need to resolve this situation expeditiously. This problem is in part due to the lack of compliance: less than one-third of the homes located in the floodplain have flood insurance.

As one who has supported the National Flood Insurance Program, I am concerned that noncompliance and high potential taxpayer liability will seriously weaken the stability of the program and could lead to calls for its repeal. Such an undesirable result could mean the loss of insurance protection for homeowners who have relied on the Federal Flood Insurance program and lenders who count on Federal flood insurance as security for mortgage loans. It could also result in higher disaster assistance costs.

There is much in S. 1405 to recommend. Included in the legislation are provisions that would increase compliance in flood-prone areas. The legislation also recognizes and encourages flood mitigation activities, and provides incentives in the form of lower premiums in those communities that undertake flood control measures.

Another important aspect of the bill is the erosion management program. The erosion provisions were included in an effort to minimize the loss of property in areas projected to be under water due to erosion in the near future. Quite simply, now that it is possible to plot future erosion with a high degree of accuracy, it makes little sense for the Federal Government to provide insurance that encourages development in these areas. The revised flood bill substantially addresses the many concerns expressed by water-front property owners, coastal communities, and others.

We have a distinguished panel of witnesses for this hearing, and I look forward to your testimony—both to clarify the outstanding questions about this legislation and to comment on the constructive modifications that have been made in Senator Kerry's bill.

I particularly want to take this time to recognize Ms. Rebecca Quinn. Ms. Quinn is here today representing the National Association of Floodplain Managers, but she is also the floodplain manager from the State of Maryland. Not only has she taken an active role at the National level to help shape this legislation, but she has also been an effective manager of the flood control program in Maryland and a constructive voice in discussions with groups and individuals in Maryland who are interested in the flood program.

Before I turn the chair over, I want to commend Senator Kerry on all the hard work that has gone into the S. 1405. I believe that S. 1405 is a sensibly balanced approach to the many issues which he had to work with.

Senator Kerry, I now turn the chair over to you.

STATEMENT OF JAMES L. WITT

DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY

Mr. Chairman, and Members of the subcommittee, it is my pleasure to appear before you today to discuss proposed changes to the National Flood Insurance Program (NFIP). I would request that my full statement be submitted for the record and I will summarize its contents in my oral statement.

This morning I would like to share with you my thoughts and goals as Director of FEMA, talk about some of our most recent experiences responding to the Midwest flooding and then discuss the specific changes being considered to the NFIP.

When I became Director of FEMA, I committed to the Congress, to the President and to the American people to rebuild and renew FEMA. Having served the people of Arkansas for over 16 years as a local official and as a State emergency services director, I saw what emergency management can do, how it can help people in times of disaster and, more important, how it can work with people to avoid disasters. It is these experiences upon which we are building a new FEMA.

I believe the mission of FEMA is simple. To reduce the loss of life and property from all types of hazards by providing the leadership and support for a comprehensive, all-hazards emergency management program which includes mitigation, preparedness, response and recovery. The cornerstone of this mission is mitigation.

I can think of no better way to serve people than to help them avoid becoming disaster victims. Reducing the risks faced by our people and our communities is the best job emergency management can accomplish.

Buildings, homes and schools that are built better and are sited out of harm's way, obviously withstand hazards better. This means less destruction, less personal and financial hardship, less tragedy. This also means less paying out of disaster assistance dollars by Federal, State and local governments to rebuild our homes our businesses and our communities.

Right after I became Director of FEMA, I visited the area of Florida struck by Hurricane Andrew. I saw a community in which homes were constructed to meet building codes and virtually every home remained intact throughout Andrew.

A few short blocks away another community wasn't so lucky.

The heroic efforts of the people of the Midwest to save their homes from the rising flood waters, provided inspiration to all of us. But it also provides vivid evidence of the problems we face when we insist on challenging the forces of nature by our siting and building practices. These problems should be constantly kept in mind as we begin the long recovery and rebuilding process throughout the flooded Midwest.

The opportunity is at hand to significantly reduce the number of people at risk from flooding in the effected areas. Against the backdrop of the Great Midwest Floods of 1993, the time has come to make the hard political choices and to make the long term investment in mitigation.

For those responsible for making investments in mitigation—mayors, county commissioners, private companies, the political support often isn't there or the short term economic costs can't be justified. If we are to make a difference right now in the recovery of the Midwest, in the rebuilding of south Florida and in all of those States and localities at risk from floods or hurricanes or earthquakes, mitigation must become a National priority, and FEMA must lead the way.

We must begin to make mitigation worthwhile at the State and local level. When I say worthwhile, we must provide the rationale, the expertise and support—the fundamental incentives for mitigation to governments, the private sector and individuals. We must combine these incentives with full use of our existing authorities and programs.

We are taking a first major step in this direction through the new organization I am proposing for FEMA which was announced as part of the Administration's National Performance Review. We are establishing at FEMA, a Directorate for Mitigation, which will combine the three primary mitigation programs in FEMA; the National Earthquake Hazards Reduction Program (NEHRP), the Hazard Mitigation Grant Program under our Disaster Relief Program and the floodplain management programs of the NFIP.

By taking this step, we will provide a concentrated focus to our efforts to work with State and local governments. It will also allow us to take advantage of the opportunities for implementing multi-hazard mitigation programs. For example, when we are working with communities on their floodplain management ordinances, we can encourage them to consider other hazards faced by their community. When a community or State applies for a hazard mitigation grant after a disaster, we should not only encourage but require that these projects are multi-hazard in nature.

Clearly, the cornerstone of the Mitigation Directorate will be the floodplain management programs of the NFIP.

The NFIP is one of the most effective mitigation programs in the Federal Government. In its 25 year history, it has provided a solid example for integrating natural hazards insurance and mitigation, but I believe more can be done.

Mr. Chairman, I believe we share the same goals as the legislation, which is to place renewed emphasis on the NFIP and to use insurance as an incentive for mitigation. I intend to fully utilize the incentives embodied in the NFIP to accelerate achievement of its risk reduction goals and I look at the legislation you are proposing, Senate bill 1405 as a significant step in strengthening this program. In this context I would like to share with you the Administration's thoughts on the proposed legislation.

There are a number of major issues which should be addressed in our efforts to improve the program. These include compliance with the flood insurance purchase requirements on lenders, mitigation grant programs, and the mapping of erosion areas. We have a number of questions and clarifications which have been transmitted to the committee prior to this hearing, so I will keep my remarks focused on the major issues.

To summarize our position on the provisions of Senate Bill 1405, we strongly support the increased insurance purchase compliance requirements, although we feel that the current proposal could be strengthened. For example, by requiring flood insurance when federally regulated lending institutions purchase mortgage loans from unregulated lenders secured by properties in special flood hazard areas. We also strongly endorse the mitigation grant program to help communities establish plans for removal of structures from the floodplain, and to carry out those plans. The Midwest floods have again demonstrated that the most important step we can take is to help communities be prepared to move quickly following the floods to make sure their citizens do not suffer more in the future. Most of the communities we deal with are small. They want to reduce the potential for destructive flooding, and desperately need this help.

We fully support Section Three of the Bill, which would give statutory recognition to the Community Rating System. Over 750 communities participate in this voluntary program which gives credits toward reducing flood insurance premiums in those communities exceeding the NFIP's minimum standards. This program has been extremely successful, and provides a solid link between floodplain management and insurance.

The Bill gives FEMA the authority to identify erosion hazard areas, which will then enable us to more effectively support communities in managing erosion hazard areas. We also endorsed the increased limits of coverage provided for in the bill which encourage people to insure to value and provides better coverage for small businesses.

Mr. Chairman, as you can see, we are very pleased with the vast majority of the bill's provisions. However, we do have some concerns in just a few areas.

In order for the NFIP to effectively protect individuals against the peril of flood, and to provide the leverage with communities to adopt and enforce the floodplain management requirements, the insurance must first be purchased. We all are painfully aware that despite the NFIP's efforts in educating thousands of agents and lenders each year, and spending nearly a million dollars annually for marketing and training activities, only about twenty percent of those nationwide who should have the coverage have actually purchased it. In the recent flooding disaster in the Midwest, that number might well be as low as ten percent.

The bill seeks to improve the program's insurance policy base by strengthening the requirements on lenders who are federally regulated or insured, and those federal agencies that insure or place mortgages in flood hazard areas, to obtain flood insurance when extending mortgage funding. We strongly support this effort. Increased compliance is critical in order to provide a greater spread of risk, and to support the new initiatives included in the bill. Without a significant increase in the policy base, the current policyholders who already fund all the NFIP's mitigation activities will have to pay for the additional mitigation, which will raise premiums in excess of $50 per policy. We also strongly support the provisions of the bill which will mandate better coordination among the federal agencies in implementing the mandatory purchase requirements.

There are some omissions which will result in less than full compliance with the mandatory purchase provisions by covered lenders. For example, I am concerned there is no mention of refinancing of home loans, or any provision for review of existing mortgage portfolios, which have the effect of limiting the purchase requirements to loan origination. This would mean that portfolios of existing loans even at federally regulated lenders would still be at risk, unnecessarily exposing the U.S. Treasury to demands for financial disaster assistance in the future. However, we applaud those lenders who promote compliance through portfolio review. I believe these would be positive additions to the bill.

Improved compliance with the mandatory purchase provisions alone will not guarantee that everyone at risk will be covered by flood insurance. There is a large, and growing, segment of the mortgage market that is not regulated by the Federal Government. Combined with those who have paid off their mortgages, this means that many structures which should have this coverage will be outside the mandatory purchase provisions.

This conclusion was confirmed in the Midwest flooding. With the outstanding support of the Small Business Administration, FEMA staff recently reviewed approximately 2,000 applications for SBA loans arising from the Midwest floods. We found that over half of all applicants whose homes were located in the floodplain did not have a mortgage. Of those who did have mortgages, about half were covered by flood insurance. This means that no matter how effective our compliance rules for regulated lenders become, we still have a lot of work ahead of us in educating people about the risk of flooding.

We enthusiastically support the provisions for mitigation insurance. As we speak, community officials and their constituents are agonizing over ways to remove substantially damaged structures in the wake of recent floods. This addition to the flood insurance coverage provided under the standard policy is critical to the success of their efforts in the future.

We are however, concerned about the provision that would deny insurance in identified erosion hazard areas. We believe that the strength of the NFIP has always been the leverage in the agreement between the participating communities and the Federal Government that communities would enforce sound land use management in exchange for the availability of flood insurance. Actuarial premiums charged in these areas, coupled with a stronger mandatory purchase provision will help discourage unwise development. While insurance denial may seem to be the simplest way to discourage development in these environmentally sensitive areas, we question how effective a deterrent this really is.

It is time to answer this question. Therefore, we seek your support for a short-term study to be done by FEMA, in conjunction with NOAA, that will examine the impacts of the denial of insurance, the application of actuarial rates on development in coastal erosion zones and coastal areas, and the requirement to purchase flood insurance at actuarial rates in these areas. This study could also look at prudent land use management strategies.

In closing Mr. Chairman, I would like to say, each and every year, the National Flood Insurance Program saves over half a billion dollars because communities have adopted and enforced floodplain management requirements.

Structures built after communities join the NFIP suffer 83 percent less damage than those built before the standards are in place. And independent studies have shown that development in the floodplain is not encouraged by the existence of the flood program, but discouraged. One recent study indicated that as much as 78 percent of potential development is steered away from the floodplain simply because of the program's minimum standards.

These are just statistics to many people, Mr. Chairman, but to me they represent real people and communities who have been helped by this program.

I want to work closely with this committee and I seek your support as we move forward together to rebuild FEMA, to strengthen the NFIP and to mitigate the risks being faced by our families, our businesses and our communities.

Mr. Chairman, I will be happy to answer any questions you and other Members of the committee may have.

TESTIMONY OF DR. JAMES BAKER

UNDER SECRETARY FOR OCEANS AND ATMOSPHERE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

Good morning Mr. Chairman and Members of the subcommittee. I am Dr. James Baker, Under Secretary of Commerce for Oceans and Atmosphere, and Administrator of the National Oceanic and Atmospheric Administration (NOAA). I am pleased to be here today to discuss NOAA's view on S. 1405, the National Flood Insurance Reform Act of 1993. I will also discuss briefly NOAA's interest in coastal flooding and erosion.

The problem we face along our coasts is really very simple: development sited too close to water bodies and without regard for the dynamic coastal environment creates unacceptable public safety risks and often causes significant environmental damage, and, eventually, unacceptable costs to the Federal Government for disaster response. This is one area where the concept of sustainable development we are trying to address within this Administration should be applied.

Mr. Chairman, NOAA believes S. 1405 is a workable compromise that will yield significant improvements to the National Flood Insurance Program (NFIP). We also believe the bill will provide a framework for a closer relationship between NOAA and the Federal Insurance Administration (FIA), and we support it. Our thoughts regarding the legislation follow:

NOAA supports the lender compliance and other reforms designed to require property owners who are eligible for NFIP coverage to purchase the coverage. We support the authorization of the Community Rating System. NOAA supports the authorization of "increased cost of construction" coverage as a rider to existing NFIP policies. We support the requirements that the Federal Emergency Management Agency (FEMA) map erosion hazard areas and that erosion risk information be disclosed at time of purchase, and I would add that NOAA is prepared to assist FEMA as it develops a coastal erosion mapping program.

NOAA also supports the erosion and flood hazard mitigation fund and the requirement that communities wishing to receive funds develop risk management plans. With respect to the denial of new Federal flood insurance in erosion hazard areas, NOAA believes a joint NOAA/FEMA study of charging actuarial rates and requiring the purchase of insurance at those rates, as well as the impact of a prohibition on insurance should be conducted before a prohibition is imposed in legislation.

While these provisions further the goal of preventing coastal disasters, NOAA believes S. 1405 should go farther to address the heart of the coastal hazards problem. NOAA has two general observations on this subject, which I will summarize here.

First, FEMA, in consultation with NOAA and other interested agencies, should develop specific, environmentally sound criteria for managing erosion risks. Without these criteria, communities are unlikely to adopt the most effective measures to reduce threats from erosion, flooding and storms.

These criteria should emphasize the protection of natural and beneficial floodplain functions and the preservation of often fragile coastal resources. Without these criteria, communities are likely to respond to erosion with hard structures and other measures that are often ineffective or result in the destruction of coastal resources.

Second, incentives for communities to adopt these criteria will be strengthened by providing funding for mitigation assistance. NOAA believes that mitigation assistance will help communities to make tough choices on flood and erosion risk management through land use controls.

NOAA has a major interest in coastal hazards management and NFIP reform. The relationship between development in coastal areas and coastal hazards is at the core of NOAA's mission. Through the administration of the Coastal Zone Management Act (CZMA) of 1972, NOAA supports State coastal management efforts to reduce risks from coastal hazards. Through the National Weather Service, NOAA plays a vital role in predicting, and preparation and warning for hurricanes, floods, and other natural hazards. The Weather Service also has more than 30 years of experience in developing precipitation frequency information used by the FIA in delineating floodplains.

In addition, NOAA provides information on tide levels, used in predicting the effects of coastal storms. Tide levels are also the basis for delineating the location of the U.S. shoreline for nautical charts—another NOAA mandate. This shoreline information is used frequently to calculate coastal erosion rates. Lastly, NOAA supports a wide range of research on coastal hazards prediction and management.

NOAA subscribes to the common sense axiom that an ounce of prevention is worth a pound of cure—it is better and cheaper to avoid problems than to try to remedy them after the damage has been done. This is one of the most important philosophies embodied in the CZMA. This 1972 law created a voluntary Federal-State partnership to promote wise management of coastal resources. Under the CZMA, NOAA provides funding and other assistance to the 29 States and U.S. island territories with approved coastal management programs.

The CZMA encourages States to prevent or significantly reduce threats to life and property by controlling development in areas vulnerable to flooding and erosion. In 1980, Congress identified the reduction of these threats as a priority for NOAA-approved State coastal management programs. This priority was reinforced in 1990 when Congress created a new program under the CZMA to encourage States to improve their management efforts in eight national interest areas, among them coastal hazards risk reduction.

To implement these mandates, many coastal States and territories have adopted policies and programs designed to limit development in flood and erosion-prone areas. State efforts include comprehensive setback programs based on documented erosion rates, building codes specific to hazardous areas, post-disaster redevelopment plans and planning activities that restrict development densities.

We cannot change the reality of dynamic barrier islands and shoals, of chronic or episodic erosion, of coastal areas' vulnerability to storms, or of inevitable cycles of hurricanes and winter storms. We also cannot ignore the movement of people to the coasts. Already, almost 50 percent of the U.S. population lives along the coast, and the number is growing. The consequences of this population growth in coastal areas are immense, ranging from crises in water quality and supply to increased exposure to coastal hazards.

Among the most important factors in coastal development has been the NFIP. The purpose of the NFIP is to use Federal flood insurance as a tool to promote sound floodplain management, as well as reduce flood losses and the Federal Government's disaster relief expenditures, a mandate fully consistent with the CZMA. State coastal programs often build upon these national standards in developing local or regional-specific coastal hazards programs. At the same time, specialized standards developed by State coastal programs further reduce flood and erosion risks, thereby advancing NFIP loss reduction objectives.

While State coastal hazards mitigation programs and the NFIP are natural partners, there are occasions when the programs work at cross purposes.

NOAA has a long standing interest in NFIP reform legislation. Since the debate on reform in the last Congress, NOAA and FIA staff have worked together on a number of issues, including the development of erosion risk management criteria for the Community Ratings System and, drawing on NOAA's coastal mapping expertise, the development of a nationwide coastal erosion mapping program. We look forward to continuing our cooperative relationship with FIA in the future.

To conclude, Mr. Chairman, we believe the Federal Government should discourage development in areas vulnerable to coastal and other natural hazards. The bill before you is necessary, but it should go further. I urge the committee not to neglect the importance of land use management in reducing damage from flooding and erosion and to adopt the NOAA recommendations.

Thank you, Mr. Chairman. I will be happy to answer any questions you have.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Mr. Chairman, thank you for holding this hearing. As you know, I have a special interest in flood insurance legislation. Missouri must have Federal flood insurance. Two of the largest rivers in the world run through our State, and many major tributaries. For our State to continue to prosper, our citizens must be able to insure against the possibility and, yes, in a few cases, even the probability, of flooding. Almost 15,000 Missouri policies have more than $760 million in coverage for homes and businesses.

There can be little argument that those who choose to live in the floodplain have a responsibility to themselves, their families and the taxpayers to insure against flooding. Moreover, enhancing compliance would help to spread the risk, placing the National Flood Insurance Program on sound actuarial footing.

And placing the program on sound financial footing is important, because there is little question that the National Flood Insurance Program is massively exposed.

I support making changes to increase the number of people who purchase and maintain flood insurance coverage. But, as a letter from one mid-Missourian shows, purchasing flood insurance is not as simple as it seems. Many people are not even aware that they live in a floodplain, and even if they are aware and do attempt to purchase flood insurance, local insurance agents do not always provide people with the proper information.

And, while I agree that it is logical to regulate activity in the floodplain to try to curb against repetitive loss, I point to a letter from two Missouri legislators who represent a district at the confluence of the Missouri and Mississippi rivers. Many of the regulations of the NFIP are designed to try to minimize repetitive loss. These Missouri legislators emphasize that we need to consider the difference between persons who experience flooding every couple of years and persons who experienced it for the very first time this summer with the truly monumental flood.

Finally, I ask that you imagine with me a State with devastation so great that we don't even know yet how many homes have been severely damaged or destroyed. The number is almost certainly more than 10,000. It is likely more than 15,000. We hope that by mid-October we will be able to fully assess the extent of our damage, because assessment will help us to move to the next step of cleaning up and rebuilding.

To give you an idea of the extent of the devastation in Missouri and the very real human impact of some of the rules, I ask that you consider our levy situation. Missouri has over 800 primary and secondary levies along its rivers. 22 of those will be rebuilt by the Corps of Engineers and 111 will be eligible for levy rehabilitation assistance from the Corps. A few more are eligible for assistance from the Soil Conservation Service. But the local communities, with private support, will be responsible for the fate of the remaining 600.

If your house was behind a 100-yr levy, you were not required to buy insurance—you were supposed to be protected. But, now the levy has failed, no one is going to rebuild it, and your house was damaged by more than 50 percent. If you want to get a mortgage and rebuild your home, you will have to abide by the 50 percent rule and build it 1 foot above the 100-yr flood level, except you don't have any insurance to rebuild the home, let alone the added expense of elevating it. These are the types of problems the people of Missouri are facing everyday.

Whether you agree or disagree with that rule, I call upon my colleagues to envision how that will change the landscape of a State so devastated by this historic flood. Some communities which played such a rich part in the development of the West, such as Clarksville, Alexandria, Washington, and Hermann, could be changed forever. Even in Ste. Genevieve, where the war against the flooding was won and the town itself saved in one of the most inspiring stories of this flood, some battles were lost and 40 historic French colonial homes suffered damage.

While structures on the Historic Register are exempt from the 50 percent rule, most historic homes never went through the formality of the National Register process and will not enjoy its protection. Many of us wonder if the trading towns that survived the Civil War, the New Madrid earthquake and the Great Depression will finally fall victim to the flood of 1993.

In conclusion, I call upon my colleagues to look at the human face behind the academic arguments. We must have a Federal Flood Insurance Program, to allow responsible people access to affordable coverage to protect themselves, their families and the taxpayers. But these laws which govern the program exact a toll on real people and real communities.

There could hardly be a more emotional time for Missourians for a hearing such as this to take place, for those who must try to rebuild a life shattered by floodwaters, for exhausted local officials who must enforce the laws we write, for those who wonder how such loss could be minimized in the future. Let us never forget the human impact as we determine the fate of this legislation and the people it will affect.

Thank you, Mr. Chairman, I also ask unanimous consent that the text of the letters I mentioned in my testimony be printed in the record.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Housing and Urban Affairs,
Committee on Banking, Housing and Urban Affairs
United States Senate

For Release on Delivery
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Flood Insurance

Information on Various Aspects of The National Flood Insurance Program

Statement of Judy A. England-Joseph, Director,
Housing and Community Development Issues,
Resources, Community, and Economic Development Division

Mr. Chairman and Members of the subcommittee, I am pleased to be here today to discuss the preliminary results of our ongoing reviews of the National Flood Insurance Program (NFIP) as you consider S. 1405, the National Flood Insurance Reform Act of 1993. This work was requested by the former Chairman of the subcommittee; the Chairman of the Senate Committee on Banking, Housing and Urban Affairs; and Senator John Kerry. As you know, NFIP is administered by the Federal Emergency Management Agency's (FEMA) Federal Insurance Administration (FIA).

The December 1992 nor'easter, the March 1993 storm in Florida, and the Midwest flooding this summer have almost drained the NFIP fund. This has raised concerns by some members of the Congress and the public about whether the NFIP whose purposes include reducing Federal expenditures on disaster assistance has sufficient financial resources to meet its current obligations and potential future payments resulting from flood damage claims made by property owners insured under the program.

Among other things, we were asked to review the (1) actuarial soundness of the NFIP fund and the implication of eliminating its subsidized flood insurance rates, (2) procedures used to set the program's flood insurance rates, and (3) financial management problems addressed in FEMA's Office of Inspector General (OIG) audits of the fund.

In summary, the NFIP fund is not, nor is it required to be, actuarially sound. This means that the NFIP fund may not have sufficient financial resources to meet future estimated losses. The fund is not actuarially sound primarily because Congress authorized insurance rates charged many policyholders to be subsidized without providing annual appropriations to fund the subsidy.

Modifying the fund to be actuarially sound by requiring subsidized property owners to pay actuarial rates may not minimize the Federal Government's overall expenditures on flood-related disaster relief. The significant rate increase that would result for subsidized property owners if this change were made would likely lead some of them to cancel their flood insurance. If policyholders with subsidized rates cancel their insurance policies, the Federal Government would likely face increased costs in the form of other Federal disaster relief assistance such as FEMA disaster assistance grants. Whether the increased costs that would be incurred by other Federal disaster relief programs would be less than, or more than, the current subsidy cannot be estimated because the number of policyholders that would cancel their insurance is unknown.

Currently, 59 percent of the 2.5 million NFIP policyholders are charged actuarial rates based on actual risk exposures and risk-related features, such as the flood-risk zone. However, for 41 percent of the policyholders in areas of high flood risk, FIA sets the subsidized rates based on the revenue needed to at least match the difference between NFIP's average historical loss year and the revenue expected from its policies with actuarial rates. Subsidized policyholders currently pay greater premiums than policyholders paying actuarial rates, but average premiums would have to approximately triple to about $1,100 if FIA computed these rates on an actuarial basis. If all 2.5 million policies had paid actuarial rates in fiscal year 1991, the fund would have received about $780 million more in premium income that year, or more than double the premium income actually collected. While FEMA only estimated the dollar value of the subsidy for this one year, the fund would currently have a significant reserve if rates had never been subsidized and participation in the program had not been effected by higher rates.

Because of recent losses sustained by the fund, it may not have sufficient financial resources to meet future estimated losses, and FIA may have to exercise its borrowing authority to pay claims. However, FEMA's OIG identified serious problems in NFIP's financial management including the fact that the NFIP's fund balance on deposit in the U.S. Treasury is commingled with all other FEMA funds into one balance and FIA has not reconciled its records with reported U.S. Treasury funds for many years. FIA has not implemented the OIG recommendation to establish a separate account, but it has acknowledged inaccuracies with the fund balance and is working to resolve the problem. Therefore, FIA's determination of when, and if, the fund needs to borrow may not be based on adequate data on the amount of funds on deposit with the U.S. Treasury. Because the financial condition of the fund has deteriorated, we believe that FIA should implement the OIG recommendation to establish a separate NFIP account in the U.S. Treasury.

Mr. Chairman, we were also requested to review two other issues (1) lender compliance with the mandatory insurance purchase requirement and (2) efforts made under the program to mitigate future flood damage. We have performed some work on lender compliance, but have only recently begun work on mitigation. Our review to date of the flood victims of the December 1992 nor'easter who received FEMA grants is finding similar results to those we reported in a 1990 report[1]—the majority of the recipients of FEMA grants that did not have flood insurance were not required to have insurance. My testimony outlines the work we plan to undertake to carry out these two objectives and the results of our work on lender compliance to date.

Before I discuss our ongoing reviews of NFIP in detail, let me briefly outline the purpose of NFIP, the history of its financial condition, and who is required to purchase flood insurance.

BACKGROUND

The National Flood Insurance Act of 1968 (P.L. 90–448), as amended, established NFIP to make flood insurance available to property owners, mitigate flood hazards, and reduce total Federal expenditures on disaster assistance. Prior to the act, flood insurance was generally not available from private insurance companies.

The act requires that premiums paid by property owners be placed in a fund for use in paying claims. In addition, the Congress authorized FIA to borrow up to $1 billion from the U.S. Treasury for those instances when claims paid were more than the fund's balance. Since the inception of the program through fiscal year 1986, the Congress appropriated about $2.1 billion, which represents about $3.3 billion in constant 1992 dollars, to NFIP to repay past loans from the U.S. Treasury and to pay for administrative expenses. No appropriations have been made to NFIP since fiscal year 1986.

Since the inception of NFIP, flood insurance rate maps (FIRM) have been prepared by FIA for over 20,000 flood prone communities to define different areas of flooding risk. Each of these FIRMs includes any special flood hazard areas—also known as 100-year floodplains—which are defined as areas subject to a 1-percent or greater chance of experiencing flooding in a given year. Only residents of communities that joined NFIP are eligible to purchase flood insurance—about 85 percent of the flood prone communities have entered NFIP. Most of the communities that did not join NFIP had no development in their floodplain.

As a prerequisite to joining NFIP, the community had to adopt FIA approved flood- plain management strategies, and FIA established building standards designed to reduce flood damage. Structures built after the community's FIRM was prepared (known as post-FIRM structures) are generally more flood worthy and are charged actuarial or risk-related rates that are not subsidized. To encourage widespread purchase of flood insurance by owners of structures built before the FIRM was prepared (pre-FIRM structures), the Congress authorized FIA to make subsidized rates available.

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. The 1973 act required the mandatory purchase of flood insurance after March 1, 1974, for (1) any Federal loan or grant to be used for acquisition or construction of a building or a mobile home in a designated flood hazard area of a participating community and (2) a loan secured by improved property in a special flood hazard area of a participating community if the loan is made by a lending institution that is regulated or insured by the Federal Government. Such lending institutions are responsible for ensuring that flood insurance is purchased in these instances. For loans made before March 1, 1974, flood insurance is not required. Also, homes with no mortgage, or homes with mortgages held by unregulated lenders are exempt.

In addition to NFIP, assistance from two other Federal disaster relief programs can be made available to assist individuals who are victims of floods. The Small Business Administration (SBA) offers low-interest loans to flood victims who are creditworthy. SBA requires that the recipient of such a loan living in the 100-year floodplain must purchase and maintain flood insurance for the life of the loan. A flood victim who cannot obtain an SBA loan may apply for a FEMA individual and family grant of up to $11,900 or the amount of the loss, whichever is less. As a prerequisite of receiving the grant, the property owner is required to purchase and maintain flood insurance for 3 years.

The stated purposes of S. 1405 is to strengthen the NFIP by reducing risks to the NFIP fund through increased compliance, incentives for community floodplain management, and mitigation assistance.

ACTUARIAL SOUNDNESS OF THE NATIONAL FLOOD INSURANCE FUND

The NFIP fund is not actuarially sound. The Congress, by authorizing subsidized rates for pre-FIRM structures without providing annual appropriations to fund the subsidy, did not set up the fund to be actuarially sound. At the same time, the Congress required rates on post-FIRM structures to be set at risk-related rates. As of 1993, rates for about 41 percent of the 2.5 million flood insurance policies are subsidized and average only about one-third of what the actuarial rate for those policies would be. The latest available information shows that if all 2.5 million policies had paid actuarial rates in fiscal year 1991, the fund would have received about $780 million more in premium income that year, or more than double the premium income actually collected. While FEMA only estimated the dollar value of the subsidy for this one year, the fund would currently have a significant reserve if rates had never been subsidized and participation in the program had not been effected by higher rates.

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[1] *Information on the Mandatory Purchase Requirement* (GAO/RCED–90–141FS, Aug. 22, 1990).

In the 1980s, FIA developed a goal for NFIP to collect sufficient revenues each year to at least meet the expected losses of an average historical loss year based on experience under the program since 1978. Because the NFIP has not suffered any catastrophic loss years since 1978, the average historical loss year used by FIA involves less claims loss than the average expected per annum claims loss over the long run. Thus, premium income does not reflect collections necessary to build reserves for potential catastrophic years in the future.

Since fiscal year 1987, FIA's goal of basing premium income on the historical average loss year, which is estimated to be between $375 million to $400 million as of 1993, has allowed the fund to cover insurance claims as well as program and administrative expenses without borrowing from the U.S. Treasury. However, the fund may not be able to cover all claims and expenses in fiscal year 1993 which amounted to about $765 million by the beginning of September 1993, primarily due to the December 1992 nor'easter, the March 1993 flooding in western Florida, and the July 1993 Midwest flooding. Thus far, FIA officials expect about 5,000 to 10,000 claims amounting to between $50 million and $100 million from the July 1993 Midwest flooding. FIA does not yet know what impact Hurricane Emily will have on the flood insurance fund, but as of early September 1993, FIA projects that Emily will generate about 2,000 claims. According to FIA officials, as of August 1993, NFIP's obligations were about $35 million more than its assets. Whether, in fact, FIA will have to exercise its borrowing authority will depend on (1) the relative timing of payments on its current obligations and monthly premium receipts of about $55 million and (2) the amount of future insurance claims.

Modifying the fund to be actuarially sound by requiring owners of pre-FIRM structures to pay actuarial rates may not minimize the Federal Government's expenditures on flood-related disaster relief. If the subsidy on pre-FIRM structures were phased out, insurance rates would need to rise approximately threefold, implying an annual average premium of about $1,100 for these structures. Such a significant rate increase would likely lead some pre-FIRM property owners, although we do not know how many, to cancel their flood insurance. If owners of pre-FIRM structures, which suffer the greatest flood loss, cancelled their insurance policies, the Federal Government would likely face increased costs in the form of FEMA disaster assistance grants and SBA low-interest loans in future floods. Although the information is dated, Mr. Chairman, it is interesting to note that in the early 1980s, our analysis indicated that if NFIP doubled the then existing average premiums (both subsidized and actuarial) about 40 percent of the homeowners would cancel their policies.[2]

The effect on total Federal disaster assistance costs of phasing out subsidized rates cannot be estimated because the number of current NFIP policyholders that would cancel their policies is unknown. Thus, it is not possible to estimate if the increased costs of other Federal disaster relief programs would be less than, or more than, the current NFIP subsidy cost.

We noticed, Mr. Chairman, that S. 1405 contains provisions to study the NFIP's premium structure. It would set up an interagency task force, including representatives from FEMA; Departments of Housing and Urban Development, Veterans Affairs, and Agriculture; and SBA to, among other things, study the possibility of revising the rate structure to account for catastrophic events and to propose strategies to establish an actuarial-based premium structure to account for all insurable risks.

Because of the complexities of the NFIP and the potential impact changes to this program have on other disaster assistance programs, we believe that the establishment of such a task force is a necessary step in proposing revisions and strategies to establish an actuarial-based premium structure.

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[2] *National Flood Insurance Program: Major Changes Needed if it is to Operate Without a Federal Subsidy,* (GAO/RCED–83–53, Jan. 3, 1983).

ACTUARIAL AND SUBSIDIZED RATE SETTING

As I mentioned previously, Mr. Chairman, NFIP flood insurance premiums are either based on actuarial principles or are subsidized depending on when the structure was built. FIA's method for establishing actuarial rates for post-FIRM construction lying within the identified 100-year floodplain follows a hydrologic method based on studies performed by the U.S. Army Corps of Engineers and private engineering companies.[3] These rates are based on available hydrologic data, flood insurance claims, simulations, as well as engineering and actuarial judgment. The basic elements needed to predict expected flood loss include probability estimates of the frequency with which floods of different severity will occur, and estimates of associated structural property damage incurred due to different types of floods. Actuarial rates are based on actual risk exposures and generally vary according to several risk-related features, such as the flood-risk zone, the height of the structure, and the amount of insurance purchased.

Subsidized rates are available only on the first $35,000 of insurance coverage for pre-FIRM properties with actuarially-based rates for any additional insurance coverage. They have never been set through an analysis of underlying flood risk on these properties. Instead they are set through a rule making and legislative process. In order to set rates on subsidized policies, FIA first determines the revenue needed to meet an average historical loss year based on its current policies in-force and its expected loss and nonloss-related costs. Next, FIA determines the revenue it will receive from policies with actuarially based rates. FIA then subtracts the expected revenue from actuarially based policies from the average historical loss year to determine the minimum premium income needed from policies with subsidized rates. FIA then computes the subsidized rate based on the minimum revenue needed and the number of subsidized policies. The proposed subsidized rate is published in the *Federal Register* for public comment and subsequently submitted for congressional approval as part of FIA's budget and authorization proceeding.

According to FIA documents, the average premium on an actuarial policy will be $247 in 1994. The average premium on a subsidized policy for 1994 will be $401 if the Congress approves a 5 cent increase in the subsidized rate. Premiums for subsidized policies are higher than those for actuarial structures but are only about one-third of what they would need to be for these rates to fully reflect flooding risks on pre-FIRM construction. FIA officials told us that pre-FIRM structures are not as elevated as post-FIRM structures and, thus, on average, are 4½ times more likely to suffer a loss. When pre-FIRM structures suffer a loss, the damage sustained is about one-third more than for post-FIRM structures. According to FIA, when these two factors are combined, pre-FIRM structures on average suffer about 6 times the damage of post-FIRM structures. The higher elevation standard is one of the primary building standards that FIA requires communities to adopt as a prerequisite for joining NFIP.

The previously mentioned interagency task force that would be created if S. 1405 became law, Mr. Chairman, will also study the extent to which the flood insurance premium rate structure could be revised to minimize existing premium rate subsidies and to incorporate premium rate adjustments for erosion hazards.

NFIP'S FINANCIAL MANAGEMENT SYSTEM

Because of recent losses sustained by the fund, it may not have sufficient financial resources to meet future estimated losses, and FIA may have to exercise its borrowing authority to pay claims. However, two audits of FIA's financial statements for fiscal years 1991 and 1992 made in accordance with the Chief Financial Officer's Act identified serious problems in NFIP's financial management affecting the fund's balance on deposit in the U.S. Treasury. Furthermore, FEMA's Inspector General found problems in other NFIP financial management systems.

FEMA's Inspector General reported that FIA does not have systems or records to effectively track or monitor NFIP's fund balance with the U.S. Treasury. Furthermore, the audits found serious problems with NFIP's financial management system and internal control structure that prevent the accumulation and reporting of reliable financial information. Since 1979, FEMA has acknowledged that its financial management procedures and practices have been both limited and inconsistently implemented. Also, the Office of Management and Budget has listed both FEMA's internal control structure and its financial management systems as high-risk areas.

NFIP's cash balance with the Treasury along with investments represent the resources available to pay flood claims and the program's administrative costs. FEMA's Inspector General reported that NFIP's balance with the Treasury is commingled with all other FEMA funds into one balance and FIA has not reconciled its records with reported U.S. Treasury funds for many years. Therefore, FIA cannot verify that the NFIP balance it maintains is accurate according to the Inspector General.

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[3] We have not reviewed these studies.

FEMA's Inspector General recommended that FEMA establish a separate account for the NFIP fund in the U.S. Treasury. FIA officials have not implemented the Inspector General's recommendation to establish a separate account, but acknowledged inaccuracies with the fund balance and said that they are working at resolving the problems.

FEMA's Inspector General also reported that it was unable to express an opinion on NFIP's financial statements for fiscal years 1991 and 1992. Specifically, the OIG reviews found that (1) property and equipment accountability was inadequate, (2) inventories were not accounted for, and (3) administrative expenses were not accurately reported. The Inspector General recommended various short-term actions to correct these problems, such as conducting physical inventories of NFIP's assets and reporting administrative expenses on an accrual basis. FIA has not implemented either of these actions, but instead is relying on the implementation of FEMA's Five-Year Financial Plan for fiscal years 1992–96 to provide long-term solutions to NFIP's financial management problems.

Because the current obligations of the fund exceed its present balance, we believe that FIA should implement the OIG's recommendation to establish a separate NFIP balance in the U.S. Treasury. Also, we believe that FIA should reexamine its decision not to make short-term improvements in NFIP's financial management system.

LENDER COMPLIANCE WITH THE MANDATORY INSURANCE PURCHASE REQUIREMENT

Mr. Chairman, in 1990 we issued a report on lender compliance with the mandatory insurance purchase requirement involving two floods in the States of Texas and Maine. In 1992, we testified before this subcommittee on the results of our review. Specifically, we found that a large majority of the flood victims in the two States that received disaster assistance—78 percent—were not subject to the mandatory purchase requirement, either because households had unmortgaged property or mortgages were held by unregulated lenders. We also found that most disaster-assisted households in Maine subject to the mandatory purchase requirement had flood insurance; however, most in Texas did not. We could not identify the reason for the disparity between the two States.

Reasons cited by lending institutions in both Texas and Maine varied as to why the properties that should have been insured were not. The most frequently cited reasons were the lender (1) erroneously classified the property as not being in an area for which insurance was mandatory or the property was not classified at all, (2) neglected to require the flood insurance at loan closing even though the lender identified the property as in an area for which insurance was mandatory, and (3) required the flood insurance at the time the loan was made but later allowed the policyholder to drop the insurance without taking any action.

Our current work on lender compliance with the mandatory insurance purchase requirement focuses on flooding caused by the December 1992 nor'easter in New York and New Jersey. FEMA had estimated that it would receive NFIP claims amounting to about $243 million shortly after this storm which was greater than the NFIP's combined losses for Hurricanes Andrew and Iniki.

Nearly two-thirds of the Federally associated assistance applied for by flood victims in the two States was for individuals covered under the NFIP as shown in table 1 below. In recent years, premium income received from policyholders paying actuarial rates has exceeded the policyholders' claims. Therefore, the NFIP had funds available to pay the claims from the 1992 nor'easter without borrowing from the U.S. Treasury. About one-third of the Federal assistance was for flood victims, most of whom were not insured under the NFIP, who applied for either Treasury-subsidized low-interest disaster loans from SBA or grants from FEMA.

Table 1: Analysis of Federally Associated Assistance in New York and New Jersey for Which Application Was Made by Flood Victims of the December Nor'easter

Assistance	Number	Dollars (in millions)	Percentage of dollars
NFIP claims	24,448	$245.9	65
SBA loans	4,874	118.9	32
FEMA grants	3,758	11.6	3
Total		$376.4	100

We are currently examining the databases for SBA loans and for FEMA individual and family grants made in New York and New Jersey to determine whether recipients of these loans and grants lived in a special flood hazard area, had flood insurance, and, if not, why not. While we have not yet begun work on SBA loans, our preliminary work on recipients of FEMA grants indicates that many of them were not required to comply with the mandatory insurance purchase requirement because they had no mortgage or had a mortgage with an unregulated lender. However, we are also finding some recipients that should have had insurance but did not.

FEMA attempted to obtain the names of lenders, if any, for those recipients of its grants that lived in special flood hazard areas in New York and New Jersey. Of the 1,403 homeowners who received grants and live in special flood hazard areas, FEMA identified 125 homeowners who also had flood insurance—we have not yet determined why homeowners with insurance also received a grant. As a result, there were 1,278 homeowners who received grants in special flood hazard areas that did not have flood insurance. However, FEMA was not able to obtain mortgage information on 526 of these homeowners. The results of our analysis of the remaining 752 homeowners that did not have flood insurance for which mortgage information is available is presented below.

- 232 homeowners, or 31 percent, should have had insurance, and
- 520 homeowners, or 69 percent, were not required to have insurance because (1) 491 homeowners, or 94 percent, did not have a mortgage and (2) 29 homeowners, or 6 percent, had mortgages with unregulated lenders.

In addition, Mr. Chairman, we have begun to obtain reasons why the 232 homeowners did not have the required insurance. At this point, we have information for just a few of these homeowners which indicates that the lenders (1) made erroneous flood determination prior to loan closing and (2) did not enforce flood insurance policy renewals. Also, Federal bank regulatory agencies, such as the Federal Deposit Insurance Corporation, told us that, when conducting compliance examinations, examiners review loan files for compliance with many regulations of which flood insurance is one. With the problems facing the banking industry over the past few years, the agencies told us that their examiners have had to spend additional time looking at the safety and soundness of the bank and less time looking at flood insurance and other compliance items.

In the next few months, we intend to complete our efforts on lender compliance. We will continue to examine SBA's and FEMA's data bases and contact lenders and homeowners to determine reasons why the required insurance was not purchased or renewed.

S. 1405 contains provisions to increase the rate of compliance with the mandatory insurance purchase requirement. It notes that the low percentage of homeowners having flood insurance in a special flood hazard area is not caused solely, or even primarily, by a lack of compliance by those that must purchase insurance but is also caused to a large extent by a lack of coverage among those that are not required to purchase such insurance. The bill proposes steps to (1) strengthen the purchase requirement for Federal agencies that support home loans and the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; (2) require premiums to be escrowed if possible; (3) force place, or buy the flood insurance for the property owner, if the owner does not; and (4) fine lenders for not complying.

Mr. Chairman, I would like to make two points regarding S. 1405's provisions aimed at increasing the rate of compliance with the mandatory insurance purchase requirement. Increased participation by subsidized and unsubsidized property owners in NFIP is likely to reduce the cost of other Federal disaster assistance programs—FEMA grants and SBA loans. However, increased participation by subsidized property owners will increase the potential liability of the NFIP because the premiums received from subsidized policyholders will not be sufficient to meet future estimated losses on these policies.

NFIP'S ATTEMPTS TO MITIGATE FUTURE FLOOD DAMAGE

Our work to date has not yet focused on NFIP's efforts to mitigate flood damage; however, we would like to point out three areas that we will be reviewing. Specifically, (1) the impact of FIA-established building standards used in special flood hazard areas, (2) FIA's efforts to deal with repetitive losses, and (3) FIA's efforts to assist State and local governments, such as the section 1362 program which authorizes funds to purchase both flood-prone structures and their lots on a willing-seller basis.

Building standards. One of the primary building standards a community must adopt to be eligible to join NFIP is to elevate structures within the identified 100-year floodplain to at least a level at which there is no greater than a 1-percent risk that it will be flooded in a given year. Pre-FIRM structures not built to these standards, on average, suffer 6 times the flood damage of post-FIRM structures. However, pre-FIRM structures that incur damage of over 50 percent of the structure must be rebuilt according to NFIP building standards. But, elevating such structures could cost $30,000 or more, a cost that is borne by the homeowner. The high cost of such a procedure is causing some homeowners to consider not rebuilding structures destroyed by Hurricane Andrew. This may also be a problem for some homeowners affected by the recent Midwest flooding.

Repetitive loss structures. Under the current NFIP operational definition, a repetitive loss structure is defined as a structure that has received two or more flood insurance claim payments of at least $1,000 since 1978. According to FIA, about 50,500 structures fit this definition—about 2 percent of the NFIP's policies—but these structures account for 52 percent of the claims paid and 47 percent of the dollars paid out of the fund. An owner of a structure that has suffered repetitive losses of less than 50 percent in the past does not have to (1) take measures to improve the floodworthiness of the structure or (2) pay higher insurance rates.

Section 1362 program. Officials of various State and national organizations representing State floodplain and emergency management interests, told us that more resources are needed for flood mitigation programs. The section 1362 program is designed to reduce flood damage through the purchase and removal of buildings that have been severely damaged, or damaged more than 25 percent three times in a five year period.

We notice, Mr. Chairman, that S. 1405 highlights the need for NFIP to improve its mitigation efforts and authorizes the expenditure of additional funds for flood and erosion mitigation assistance activities. The bill would also allow FIA to charge the applicable risk premium rate based on accepted actuarial principles to a property determined to be a repetitive loss structure.

In conclusion, Mr. Chairman, requiring subsidized policyholders to pay actuarial rates would be a primary way to make the NFIP fund actuarially sound, but in doing so could (1) cause a significant number of these policyholders to cancel their insurance and (2) increase the costs of other Federal disaster relief assistance grant and loan programs. Whether the increased costs that would be incurred by other Federal disaster assistance programs would be less than, or more than, the current subsidy cost cannot be estimated because the number of policyholders that would cancel their insurance is unknown. Therefore, there is a need for the task force that would be established by S. 1405 in studying revisions to premium rate structures and strategies, to establish an actuarially based premium structure to not only examine such revisions in the context of their impact on NFIP, but to also consider their potential impact on other Federal disaster assistance programs.

Also, FIA's determination of when, and if, the NFIP fund needs to borrow from the U.S. Treasury may not be based on adequate data that FEMA's maintains on the amount of NFIP funds it has on deposit in the U.S. Treasury. FEMA's Inspector General has raised serious questions about FIA's system to track the fund's balance at the U.S. Treasury and the adequacy of its financial management and internal control structure. Because FIA may have to exercise its borrowing authority to pay claims, we believe that FIA should implement the OIG's recommendation to establish a separate NFIP balance in the U.S. Treasury. Also, we believe that FIA should reexamine its decision not to make short-term improvements in NFIP's financial management system.

Our limited work to date does not allow us to make firm conclusions about lender compliance; however, our work on the 1992 nor'easter does indicate most property owners in special flood hazard areas in New York and New Jersey that do not have flood insurance are not required to have insurance.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you or the other members may have.

TESTIMONY OF MARGARET (PEGGY) BOWKER, P.E.

Chair of the National Flood Determination Association

The National Flood Determination Association (NFDA) is pleased to testify today regarding S. 1405 the, "National Flood Insurance Reform Act of 1993."

Flood zone determination companies offer specialized services to lenders by reviewing the location of properties which will secure a loan and by providing information as to whether it is within a special flood hazard area shown on FEMA's Flood Insurance Rate Maps. This review provides our clients with sufficient information to provide a borrower with notice regarding flood insurance requirements to complete the loan and the availability of insurance within the community.

Our organization represents a broad spectrum of the flood determination industry and includes members who have been in the flood determination business for more than fifteen years, as well as more recently formed businesses. Our membership ranges from large national corporations to small regional companies. We formed this organization two years ago to explore matters of common interest and to provide a vehicle for expressing the opinions of our industry as a whole.

We would like to commend Senator Kerry and his staff as well as the other Senators and their staffs for the formulation of S. 1405. We especially appreciate the opportunity given us to provide input during the drafting of this bill and to testify here today. We feel that it is extremely important that provisions of the current law be strengthened to assure greater compliance. The fiscal impact of recent catastrophic events in the Midwest on disaster relief requirements would have been lessened considerably if all of the properties which were located within special flood hazard areas had been insured.

The NFDA strongly supports the intent of the legislation which is before us today. In our collective experience, we have developed a first-hand knowledge of the many lenders in the U.S. who have made a good faith effort to comply with the current law; and also, with those who have been less diligent. We believe that the National Flood Insurance Program will benefit from measures which are proposed in S. 1405.

The majority of our comments will be addressed to *Title II Compliance and Increased Participation* as requested.

Section 202 Escrow of Flood Insurance Payments

We commend the requirement that premiums for flood insurance be paid to an escrow account. This provision will help assure that flood insurance is retained for the term of the loan if the property remains flood prone. It should help to increase the policy base. Currently some borrowers are taking out a policy to close a loan and are subsequently dropping the coverage.

Section 203 Notice Requirements

Subsections a and b. We favor the current 10 day notice guidelines rather than the proposed language. The current practice requires notice of information on the flood prone status of property securing a loan be delivered to a borrower ten days in advance of close of escrow (or prior to the close of escrow in transactions with a shorter time frame). The proposed regulation does not provide the consumer with the protection of the current practice. We do not believe that notice at the closing table will provide sufficient time for a borrower to obtain the required insurance, or to make the decision not to buy.

Subsection c Participating Communities. We believe this portion of S. 1405 to be unnecessarily burdensome to local communities and that it will achieve little. Under this provision communities would be required to notify property owners and lenders of map changes. We believe few property owners would notify their lenders that they are required to purchase flood insurance. Community officials charged with the implementation of National Flood Insurance Program regulations would have little knowledge of all the lenders or servicers who have real estate interests in their community. Tax bills are sent to departments which impound funds for tax payment. If notices are sent to these departments, lenders or servicers will have to set up a separate system to route these notices to the proper compliance or insurance departments. We believe that this requirement places an unnecessary burden on the community and on lenders and servicers. If lenders subscribe to obtaining the compendium proposed to be published by the Director in Title VI, Section 604(h), they will be made aware of the changes on a more timely basis. We would also suggest that the current practice of FEMA publishing flood elevations in a local newspaper when changes become effective, be expanded or modified to present a map of the affected area. This would present the new information in a more straightforward way than the publication of elevations which mean little to the lender or the property owner.

SECTION 204 PLACEMENT OF FLOOD INSURANCE

(e)(2). The proposed review by the Director of contested determinations will create an enormous amount of work for FEMA. Our collective experience shows that a majority of property owners who have purchased flood prone property and who have had no previous knowledge of its flood prone status, will often protest the requirement to purchase flood insurance. The Director's office, and most of the FEMA regional offices, have neither the staff nor the resources to respond to a large number of requests for determinations. An appeals mechanism already exists in the Letter of Map Amendment process.

SECTION 205 STANDARD HAZARD DETERMINATION FORM

(a)(b)(c). We believe that a requirement for standard data elements could satisfy compliance objectives and eliminate the need for printing yet another government form. These data elements should be required and maintained for all loans, not just those for properties in a special flood hazard area. These data elements should also be allowed to be maintained in electronic media, provided they are readily accessible.

(d) Guarantees. We support the requirement for guarantee of information. We believe that the scope and nature of the guarantees contemplated should be set forth in the legislation, or developed by the Director in consultation with lenders and the flood determination industry. A guarantee could mean as little as a refund of the cost of a determination if an error was made. Most reputable firms will, at a minimum, guarantee damages up to the limit available under a flood policy to a property owner who is damaged, and is located in a special flood hazard area that has been erroneously determined to be outside of the hazard area.

(e) Reliance on Previous Determinations. The NFDA *opposes* this provision of S. 1405 which allows a lender to rely on any determination made within five years. This would presume changes made to maps within the five year period are insignificant. This also may allow reliance on information produced by parties which are no longer in business, such as appraisers, S & L's, surveyors, etc. In addition, most reputable determination companies have quality control procedures which prevent them from issuing determinations which are in error. On-going quality control procedures, however, may sometimes detect an error which has been made, and a new determination is issued superseding the first. Under this provision a lender might rely on the first document for five years, especially if the second were not properly filed. A second case might be with a lender which subscribes to a "life-of-loan" service. Under this scenario, a determination is issued and a year later the map is revised, and the flood status of the parcel changes. A second determination is issued. Upon reviewing the file, a purchaser sees only the first determination and it is less than five years old and it is accepted as valid. In view of these very real possibilities, *we urge the deletion of this entire subsection.*

SECTION 207 PENALTIES AND CORRECTIVE ACTIONS

(f) Civil Penalties. We support the initiation of civil penalties as one tool to achieve better compliance with current and proposed regulations. Subsection (3), however, is unclear. It appears that an institution would be able to buy and hold loans which are not in compliance with this act and will not be held liable. If that is not the intent, some clarification may be required at least in the report language. If it is the intent, it appears to be counterproductive to the goals of the bill and should be reconsidered.

The following are items which were proposed in previous legislation and we urge your consideration of inclusion into the current bill.

The requirement for flood insurance should not be able to be waived. Perhaps this is implicit in the intent of the bill; however, we would urge some specificity in the bill's language. Lenders occasionally waive requirements for some insurances; in those cases, a lender makes a business decision to self-insure. In order that the program function as intended, we urge the prohibition of waivers.

A provision allowing the lender to charge a borrower a reasonable fee for the costs of determining whether a property lies within a special flood hazard area should be included in this bill. In some cases, State or local laws do not allow this. In other cases, interpretation of Federal rules has caused agencies to disallow this pass through. We favor the following language:

Not withstanding any other Federal or State law, any lender may charge the borrower a reasonable fee for the costs of determining whether the improved real estate or mobile home securing the loan is located in an area of special flood hazards, if such determination is made pursuant to the making, increasing, extending, or renewing of a loan.

The following comments on other sections of S. 1405 are offered in support of the goal of achieving greater compliance.

TITLE III COMMUNITY RATING SYSTEM

We support this provision especially because it promotes awareness of flood hazards. The program also encourages communities to go beyond the minimums set and will contribute to the overall strength of the National Flood Insurance Program.

SECTION 604 UPDATING OF FLOOD INSURANCE MAPS

(g) Notification. We *strongly support* the requirement that all changes to maps be published in a timely manner. Currently there is no way to obtain this information except from individual communities. This lack of centralized distribution makes it difficult, if not impossible, to make determinations based upon the most current data. We would suggest, however, that these changes become effective on or after the date of publication rather than thirty days *prior*.

(h) Availability. We strongly support this provision to publish on a semi-annual basis, changes which have been made to maps in a compendium. We urge that this provision be expanded to require specific dates for publication, and that it include a listing of all communities and their current map dates and program information, e.g. regular or emergency program, participating, suspended or non-participating.

SECTION 605 TECHNICAL MAPPING ADVISORY COUNCIL

We strongly support the formation of this council and appreciate the opportunity to be included in its membership. We have been meeting with the FEMA staff on mapping issues since our organization began. As some of the primary users of the maps, we believe we can offer valuable technical assistance for FEMA's program.

As I noted earlier, the NFDA supports S. 1405 and encourages your consideration of our suggested revisions and additions. We appreciate this opportunity for input and we will remain available to provide any clarification of our position or other input that you may require.

STATEMENT OF ROBERT J. ENGELSTAD

SENIOR VICE PRESIDENT FOR MORTGAGE AND LENDER STANDARDS

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Mr. Chairman, my name is Robert Engelstad. I am Fannie Mae's Senior Vice President for Mortgage and Lender Standards. I appreciate the invitation to discuss S. 1405, the National Flood Insurance Reform Act of 1993, with emphasis on compliance with the flood insurance program. While Fannie Mae favors certain provisions of this bill, particularly the clarifications with respect to the required placement of flood insurance on existing loans when the Federal Emergency Management Agency (FEMA) remapping places properties in a floodplain, we believe that the provisions requiring new regulatory procedures would not address the underlying problem, would add costs for all parties, and would unnecessarily start the "Balkanization" of the regulatory oversight system Congress established just last year.

Fannie Mae is a privately-owned corporation with a Federal charter. Our sole business is to support residential housing by making a secondary market for mortgages. Fannie Mae is both the largest American investor in mortgages and a major issuer of mortgage-backed securities secured by properties for low-, moderate- and middle-income families. In 1992, the company purchased $257 billion of mortgages from 1,700 financial institutions throughout the country, serving 2.9 million families. In the first six months of 1993, Fannie Mae financed $121 billion in mortgages for an additional 1.3 million families. Fannie Mae, Freddie Mac and other private players have greatly expanded the sources of funds for home mortgages by linking the capital and mortgage markets. The secondary market has provided millions of families a reliable supply of credit at lower cost.

The recent growth in the secondary market results from our housing finance system becoming increasingly integrated into the Nation's and the world's capital markets. As that has occurred, the presence of Fannie Mae and Freddie Mac has become even more important to home buyers, enabling them to compete with large corporations in accessing funds and assuring them a supply of affordable credit. Housing's continued access to capital markets depends on investors remaining confident about the quality of the American home mortgage, including appropriate insurance coverage of all types. If the integrity of the home mortgage is questioned, Fannie Mae and other mortgage lenders will face a difficult task in attracting mortgage funds which in turn will curtail the availability of affordable money to home buyers. Flood insurance is increasingly a part of this picture because of the heightened public awareness of flood dangers and of the cost of flood damage that has followed on the recent floods in the Midwest.

My testimony will focus on three areas today:

- general principles of Fannie Mae's underwriting and the procedures we use to avert or curtail to the greatest extent possible any losses to Fannie Mae and to borrowers from insufficient flood insurance coverage;
- the existing law with respect to flood insurance and the impact of the proposed changes;
- our general support for statutory clarification coupled with the reasons for our opposition to additional regulations.

GENERAL PRINCIPLES UNDERLYING FANNIE MAE'S UNDERWRITING

Before reviewing Fannie Mae's specific underwriting guidelines relating to flood insurance, I would like to define the basic principles that guide our underwriting, which play a critical role today.

Fannie Mae's guidelines on flood insurance are part of the extensive underwriting standards we have established for loans we will buy from primary lenders. Rather than underwriting every loan purchased, we delegate underwriting and approval of our loan purchases to the originating lender. Our contracts with lenders that sell or service these loans require them to warrant that each loan sold to Fannie Mae complies with our guidelines and with all applicable local and Federal laws governing mortgage lending. We enforce the guidelines and assure the integrity of our purchases through lender monitoring programs, quality control underwriting reviews, and the lender's contractual obligation to repurchase loans, or indemnify us for losses, if the warranties are breached.

This concept of "delegated" underwriting enables Fannie Mae to process efficiently the large volume of loans that we buy. The ability to process this volume in a way that minimizes administrative cost while maximizing investment quality underlies our ability to provide liquidity to the primary market. That liquidity, in turn, is crucial to our mission of supporting homeownership by lowering the cost of mortgage credit.

Our guidelines are designed to reflect sound underwriting principles that will maintain investor confidence in our mortgage securities and in the company itself. Our guidelines also address legislative requirements that affect the primary mortgage lender. We continually review and monitor our guidelines to ensure that they fully support local, State and Federal laws relating to the mortgage transaction. In addition, we issue announcements periodically to make changes to our guidelines or send letters to remind lenders about particular aspects of our requirements.

Fannie Mae's Flood Insurance Guidelines

Fannie Mae looks to its lenders to oversee and to accept responsibility for ensuring that loans meet our underwriting standards. This includes securing necessary flood insurance coverage. Our underwriting guidelines address this in several ways.

Fannie Mae requires flood insurance for any property when its improvements are located in a Special Flood Hazard Area that has Federally mandated flood insurance purchase requirements—areas designated as A, AE, AH, AO, A1–30, A–99, V, VE or V1–30 on flood hazard boundary or flood insurance rate maps. Flood insurance must generally be in the form of the standard policy issued by members of the National Flood Insurers Association.

We will waive our flood insurance requirement if:

- the property improvements are not in the Special Flood Hazard Area, even though part of the property may be; or
- the mortgagor obtains a letter from FEMA stating that its maps have been amended so that the property improvements are no longer in a Special Flood Hazard Area.

Identification of Special Flood Hazard Areas

Fannie Mae's property appraisal standards require the appraiser to determine whether the property is located in a Special Flood Hazard Area identified by FEMA. We recently changed the appraisal form in order to improve the quality of the information. Previously, the appraiser indicated whether the property is in a Special Flood Hazard Area and, if so, provided specific information from the FEMA map.

With the change, appraisers are required to note the FEMA map information for all appraisals, regardless of whether the property is located in a Special Flood Hazard Area. We think this small change will help improve lender compliance.

In addition to relying on the appraiser for making the determination, some lenders also rely on information provided by companies that specialize in making flood hazard area determinations. Whether a lender relies on the appraiser's determination or another source, we clearly hold the lender accountable for the accuracy of the determination and, if applicable, for obtaining required flood insurance.

Coverage Amount

The minimum amount of flood insurance required for mortgages on one-to-four-family properties, individual PUD units, and individual town house or row house condominium units is the lower of:

- the minimum amount required, under the terms of the coverage, to compensate for any damage or loss on a replacement cost basis (which is usually 80 percent of the insurable value of the improvements) or the unpaid balance of the mortgage if the replacement cost coverage is not available for the type of building insured; or
- the maximum insurance available under the appropriate National Flood Insurance Administration program.

Unless a higher maximum amount is required by State law, we allow a maximum deductible clause equal to the lesser of $1,000 or 1 percent of the policy face amount.

Escrow Requirements

Generally, the loans purchased by Fannie Mae have requirements for placing part of the borrower's monthly payment into an escrow deposit account so that funds will be available to pay taxes, mortgage insurance premiums, hazard and flood insurance premiums, and other special assessments.

Although the lender may occasionally waive the escrow deposit account requirement for VA or conventional mortgages, Fannie Mae still holds the lender responsible for the timely payment of the taxes and insurance premiums. If the borrower fails to pay the taxes or does not keep the hazard and flood insurance in force, we require the lender to advance its own funds to pay the outstanding bills and begin collecting monthly escrow deposits from the mortgagor to pay future bills.

Errors and Omissions Coverage

We require all lenders that sell or service our loans to secure protection under an errors and omissions insurance policy. This policy protects the lender against negligence, errors, or omissions by its staff related to matters such as providing and maintaining flood insurance that meets our requirements. It also benefits borrowers indirectly.

Thus, if the lender fails to obtain flood insurance at loan origination—when it was required—or fails to renew the flood insurance (or to ensure that the mortgagor has done so), any flood loss would be covered by this insurance up to the aggregate limit of coverage. If a borrower defaulted on an uninsured property because it was damaged by flood, the lender's errors and omissions insurance policy would pay the lender the loan balance, making the lender whole for the defaulted loan amount.

Similarly, if the borrower obtained a judgment against the lender for failing to maintain flood insurance coverage for which it was collecting escrow deposits, the lender could file against its errors and omissions policy for the amount of the property damage.

If Fannie Mae had bought the loan in this example, we would require the lender to repurchase the loan from us with the insurance proceeds.

Fannie Mae Quality Control Program

Through our mortgage underwriting reviews, our lender operation reviews, and the contractual obligations of our lenders to remedy mortgage deficiencies, Fannie Mae effectively enforces its policy of holding lenders accountable for assuring proper flood insurance coverage, both when the loan is originated and through the time it remains a Fannie Mae investment. To monitor lender compliance with Fannie Mae requirements, our regional offices perform underwriting reviews that include surveying legal documents, insurance documents, the underwriting review of a borrower's credit and the underwriting review of the property appraisal. Our quality control review system is based on a statistical sampling method that provides Fannie Mae with a 95 percent confidence level. It involves a random selection (which predicts the behavior of the whole population by looking at a small percentage of the portfolio), plus supplemental discretionary sampling. Most of the reviews take place within a few months after we purchase the mortgage. Additional reviews, such as reviews of loans that become early payment defaults or foreclosures, take place when the default or foreclosure occurs.

The regional offices use several different methods to monitor compliance with our flood insurance requirements through the underwriting review process. Compliance checks include methods such as checking the HUD–1 settlement statement when the appraisal indicates that the property is in a floodplain to see if flood insurance coverage was paid for at closing and that a renewal premium is included as part of the escrow deposits. Another method involves appraisal field reviews that we have performed by appraisers that we select. The review appraiser checks the accuracy of the original appraisal report. The review appraisal includes a specific request for the reviewer to check the accuracy of the flood hazard area determination made by the original appraiser. If our spot-check appraisal indicates that the property is located in a flood zone, but the original appraisal did not so indicate, we will require the lender to ensure that appropriate insurance coverage is obtained.

Generally, we take the following actions based on the results of our underwriting reviews. If our review shows that the original appraisal determined that the property is located in a flood zone, the reviewer requires the lender to provide evidence of flood insurance. If the lender did not obtain the required flood insurance, the regional office will ask the lender to obtain the flood insurance. If the lender fails to supply the required coverage, the lender must repurchase the loan from Fannie Mae.

In addition to our mortgage underwriting reviews, lender compliance for flood insurance is also a component of our lender operational reviews. We do periodic onsite assessments of our lenders' mortgage servicing operation. The assessment includes a review of whether proper procedures are in place to ensure the maintenance of hazard insurance and, when required, flood insurance.

Servicing Requirements

Fannie Mae requires its lenders to monitor on an ongoing basis any changes in Special Flood Hazard Areas. If, during the normal course of business, a lender discovers that the redefinition of a floodplain has resulted in the property improvements being included in a flood zone, the lender must notify the mortgagor to obtain coverage against possible damage.

Fannie Mae also reminds servicers of the requirement for flood insurance as circumstances warrant. For example, in 1990 we notified servicers that FEMA maps of the Sacramento area had been redrawn and reminded them to notify borrowers of the need to obtain flood insurance. Periodically Fannie Mae revises its guidelines, including requirements concerning flood insurance where necessary. A recent revision clarified that floods are one of the hazards against which lenders could require borrowers to insure. Our requirements in this regard go beyond the Federal statute.

Fannie Mae's Experience With Flood Losses

Over the past several years, our internal review procedures for acquired properties have revealed only three properties affected by flood damage, and in only one case was lack of flood insurance the cause of a loss. That case involved a mortgage that had been included in a servicing transfer that we initiated. Since the new servicer was not able to confirm whether flood insurance coverage was in effect, we absorbed the loss.

CURRENT STATUTORY REQUIREMENTS

Fannie Mae's flood insurance guidelines complement the statutory requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, and related regulations. These Federal laws require banking and thrift institutions to determine that a borrower has secured flood insurance prior to making, increasing, extending or renewing a loan secured by improved real estate in a flood hazard area, if a flood hazard map has been published for the community in which the property is located, and if the community in which the area is located participates in the National Flood Insurance Program. Congress initially enacted the flood insurance measures to reduce Federal expenses for disaster assistance, to promote prudent development of flood hazard areas, and to prevent banking institutions from making loans secured by real estate with a potential for flood loss.

If property securing the loan is in a flood hazard area, the bank or thrift must notify the borrower that the property is in that area and indicate whether related flood Federal disaster relief assistance is available. Banks and thrifts must maintain records that demonstrate compliance with the Acts and the implementing regulations. The statutes mandate enforcement by the primary supervisor of each banking or other covered lending institution.

The flood insurance laws and regulations were designed to be enforced through primary mortgage lenders and their regulators, with complementary requirements for Fannie Mae and Freddie Mac. Fannie Mae has developed underwriting standards, discussed above, that address the Acts and also reinforce the overall framework applicable to primary lenders. Accurately identifying flood hazards and the need for flood insurance is essential to a lender's decision to make a loan. The reliability of the decision on these issues is also important to any subsequent purchase of the loan by an investor in the secondary market, such as Fannie Mae.

Although existing statutory language is clear in many respects, at least one significant question remains. The statute clearly applies wherever loans are made, increased, extended, or renewed. Thus the lender must require flood insurance whenever it originates a loan secured by property located in a Special Flood Hazard Area, or whenever it makes material changes in the terms of such a loan. What has been unclear in current law is whether the lender must require flood insurance with respect to an existing loan. This issue arises in three situations: when the lender erroneously failed to require flood insurance at origination; when insurance in place at origination was subsequently allowed to lapse; and when FEMA revises its floodplain maps, resulting in property that previously was not determined to be in a Special Flood Hazard Area at the time of the loan origination being so designated.

Some have argued that the current statutory language precludes lenders from requiring flood insurance for loans in remapped areas. When FEMA remapping in 1989 resulted in the reclassification of large areas in and around the city of Sacramento, lenders notified borrowers of the need to obtain flood insurance on the properties newly determined to be at risk. The California Insurance Commissioner and the County of Sacramento District Attorney's Office led a public campaign against these lenders, contending that they had no legal authority to require flood insurance with respect to existing loans. Lawsuits have been filed and are currently pending against five lenders, alleging violations of California law in the lenders' notices to borrowers asserting that flood insurance is required by Federal law. This lawsuit is in part the result of alleged lender errors in identifying properties as having been reclassified, but even with respect to the properties that FEMA unarguably determined to be flood prone, the complaint alleges that it was illegal for the lender to require flood insurance. Remapping of the Los Angeles area, expected to be completed in 1994, will exacerbate the situation.

VIEWS ON THE NATIONAL FLOOD INSURANCE REFORM ACT OF 1993

The National Flood Insurance Reform Act of 1993 contains many initiatives that Fannie Mae believes would be beneficial. Additional insurance, more accessible and more accurate maps, and a standard form for information about flood areas are all positive developments. Because most provisions do not affect Fannie Mae directly, I will confine my comments on the specifics of the bill to the two areas where Fannie Mae has a significant interest.

Because of the difficulties due to the ambiguity of the current statute, Fannie Mae supports revisions to clarify the lender's authority to require the borrower to obtain flood insurance on existing loans, particularly loans reclassified as being located in a Special Flood Hazard Area after FEMA remapping. In order to maximize effectiveness of the Federal flood insurance program, it is important to include the largest possible number of properties located in Special Flood Hazard Areas. This increases the funds available to cover flood losses. To permit properties located in remapped areas to escape coverage requirements undercuts the effectiveness of the program, exposes homeowners and lenders to loss, and ultimately will increase costs to the Federal Government, which picks up the tab for uninsured properties damaged by floods. The large percentage of apparently uninsured properties damaged by the recent floods in the Mississippi valley and the resultant necessity to appropriate billions in flood relief have dramatized the need to increase the pool of covered properties.

Fannie Mae supports the language of the bill that addresses this situation, but we feel that a technical correction would increase its effectiveness. Section 204 currently provides that lenders must notify borrowers of the need for flood insurance, and may force-place such insurance, if the lender discovers that the property is not covered "during the term of the loan secured by improved real estate or by a manufactured home located in an area that has been identified by the Director [of FEMA] as an area having special flood hazards." Because this provision does not address the timing of the Director's determination, it can be read as permitting the lender to require flood insurance only where that determination was made when the loan was secured by improved real property, i.e. at the time the loan was originated. This clearly would permit insurance to be required where the lender should have required it at the time of origination but failed to do so. It also permits the lender to require insurance where insurance was obtained initially but subsequently was allowed to lapse. The bill language remains ambiguous, however, in the case of remapping. In order to clarify that the requirement for flood insurance also applies to properties that are not classified as flood-prone at origination but are picked up by subsequent remapping, we suggest that Section 204 be amended to begin "If, during the term of a loan secured by improved real estate or by a manufactured home located in an area that has been identified by the Director at the origination of the loan, or at any other time as an area having special flood hazards."

An additional correction to the scope of this provision also is needed to achieve maximum effectiveness in accomplishing the statutory objectives. The bill requires that borrowers be notified of the need for flood insurance by "regulated lending institutions" and Fannie Mae and Freddie Mac. We believe that this provision is both too broad and too narrow. It should include not only regulated lending institutions (i.e. banks and savings associations), but also other servicers such as mortgage bankers, in order to pick up all those who are in the best position to notify borrowers of the necessity for flood insurance. For the same reason, the secondary market agencies should not be included, because they have no direct contact with borrowers. We suggest that the bill be amended by substituting the phrase "lenders and servicers" for "regulated lending institution or Federal agency lender."

Finally, there is one section of the proposed legislation that Fannie Mae cannot support. Section 201(a)(3) would require the Director of the Office of Federal Housing Enterprise Oversight (OFHEO) to promulgate regulations mandating that Fannie Mae and Freddie Mac establish procedures to assure flood insurance coverage of all loans they purchase that are located in special flood hazard areas at the time of origination.

Fannie Mae appreciates that at first blush it seems like traditional practice for Congress to assign new regulatory requirements when it identifies a problem and assembles a package of directives to address the issue. But as the President and Vice President pointed out just last week in their initiatives to reinvent government, this standard operating procedure leads to so many new regulations that one needs forklifts to carry them around. We believe that in this case a close examination of the problems suggests that new regulatory authority is not necessary, would involve added costs for everyone, and moves away from the new regulatory approach Congress designed just last year in establishing our new regulator, OFHEO.

In this case, Fannie Mae and Freddie Mac have demonstrated through their own actions that we want the loans in Special Flood Hazard Areas to be covered by flood insurance. We support this policy not just because we agree with the public interest arguments, but because it is in our business interest to have this insurance.

In pursuing our business interest in having flood insurance coverage, we have encountered some resistance from some localities because no one expects floods—or wants to pay for insurance—until the calamity arrives. So the problem to be fixed is for Congress to clarify the legal requirement—and our authority—so we can pursue a business interest that parallels the public policy interest. Indeed, our current procedures, conveyed through our contracts with lenders, are more extensive in specifying the need for insurance than is the bill. This is not a situation where a regulator needs new authority to compel us to take an action we may prefer not to take. In effect, one more regulation would mean more costs for regulatory recordkeeping, for internal control procedures designed to satisfy OFHEO, and ultimately for lenders and home buyers—without providing any additional protection.

Moreover, when Congress established our new regulator, just last year, it devised an integrated, cohesive approach that drew some lessons from experience with financial institutions regulations. Sometimes financial regulators have overlooked the safety and soundness "forest" when they have been ordered to check off a long list of detailed "trees" that is assembled piecemeal over the years. In establishing OFHEO, in contrast, the Congress charged its new Director with the duty to insure the adequate capitalization and safe operation of Fannie Mae and Freddie Mac. It would be unfortunate, less than a year after passage of the new Act, to begin an item-by-item "Balkanization" of our regulation—especially when the new regulation is not even directed at the real problem.

In sum, we urge Congress not to impose new regulations—not because we disagree with your goal—but because we share it, and we do not believe it is necessary to add to the regulatory costs of the housing finance system. Ensuring flood insurance coverage is something we *want to do*, *are doing*, and is *in our interest to do*; we believe the purpose of the bill is to ensure that we *can do it*.

SUMMARY

Although the flood insurance statutes are designed to operate through banks, thrifts and other lenders with enforcement by the various financial institution regulators, Fannie Mae has drafted complementary underwriting guidelines that apply to our approved lenders. Our post-purchase reviews and other compliance checks also reinforce the supervision mandated by law by lenders' primary supervisors.

Through these measures, we have been able to minimize risk to Fannie Mae and thus enhance the integrity of our operations, and contribute to the investor confidence in our products that is vital to our public mission.

The National Flood Insurance Reform Act of 1993 would support the efforts of Fannie Mae in clarifying the authority of lenders to require flood insurance where FEMA remapping has changed the flood status of the security property. With some minor amendments in the legislative language, Fannie Mae would encourage the Congress to adopt these changes. Fannie Mae at the same time urges the Congress to omit redundant requirements for regulations in this area.

We welcome the opportunity to discuss this matter today, and will look forward to continuing to help the subcommittee in every possible way to improve administration of the flood insurance laws. I will be pleased to answer any questions you or Members of the subcommittee might have.

TESTIMONY OF MICHAEL K. STAMPER

EXECUTIVE VICE PRESIDENT, RISK MANAGEMENT

FEDERAL HOME LOAN MORTGAGE CORPORATION

Mr. Chairman and Members of the subcommittee, my name is Mike Stamper, and I am Executive Vice President, Risk Management of the Federal Home Loan Mortgage Corporation, better known as Freddie Mac. My division is responsible for the development and enforcement of quality standards for Freddie Mac's acquisition and administration of residential mortgages. I appreciate the opportunity to appear before you today to discuss flood insurance in general, and S. 1405, the National Flood Insurance Reform Act of 1993, in particular. Freddie Mac applauds your efforts, Senator Kerry, to clarify and strengthen the flood insurance policies and requirements in the National Flood Insurance Act of 1968 ("1968 Act") and the Flood Disaster Protection Act of 1973 ("1973 Act"). We have, however, two areas of concern with the legislation in its current form, which I will address in detail later in my testimony. Freddie Mac looks forward to working with the subcommittee and Congress as a whole on the issue of flood insurance.

Freddie Mac realizes the devastating impact that flooding can have on communities and individual homeowners, and we appreciate the important role that flood insurance plays in mitigating this impact in the unfortunate circumstances where it is needed. Pursuant to the 1973 Act, Freddie Mac is prohibited by law from purchasing mortgages secured by properties in Special Flood Hazard Areas ("SFHAs") as classified by the Federal Emergency Management Agency ("FEMA") if these properties are not covered by flood insurance. Freddie Mac believes that the procedures we have in place ensure that properties securing mortgage loans purchased by Freddie Mac are covered by flood insurance when they are determined to be exposed to flood risks. In fact, Freddie Mac's own requirements are more stringent than the statutory requirement in a number of areas.

Freddie Mac is a secondary market entity that purchases mortgage loans from lenders. In other words, we do not make mortgage loans ourselves. Instead, we purchase loans from entities that originate and service mortgages, to which we refer collectively as "seller/servicers." Freddie Mac purchases a large volume of mortgage loans; in 1992, we purchased 1.7 million of such loans, more than 6500 each business day. In order to process this high volume of transactions in a highly automated environment while ensuring the efficiency of the secondary market, we cannot review each loan in detail. Instead, we rely on contractual provisions in the form of representations and warranties made by our seller/servicers that the loans we purchase meet all legal requirements and our own guidelines. One such representation made to Freddie Mac by our seller/servicers is that a property required to have flood insurance is in fact covered by flood insurance for the life of the mortgage loan, unless the requirement no longer applies (such as when FEMA removes the area's SFHA designation).

In order to ensure that the representations made by the seller/servicers are true, Freddie Mac has a compliance monitoring system, which is summarized later in my testimony. This system works well. Freddie Mac has suffered no losses from flooding disasters such as Hurricane Hugo in 1989 and the Southwest flooding in 1990. To ensure that we are in fact in compliance with flood insurance requirements, last week we examined a sample of 9000 loans in our portfolio on properties in designated disaster counties in nine States subject to the recent flooding in the Midwest. Of these 9000 loans, only 106 mortgaged properties were determined to be in SFHAs. Of the 106 loans secured by those properties, we found only two incidences of noncompliance.

The recent floods in the Midwest have brought the country's flood insurance program under scrutiny. Some perceive a problem with the level of compliance with flood insurance requirements throughout the country, because many properties suffering flood damage are not covered by flood insurance. The requirements established by Federal law result, however, in cases where properties that are located in SFHAs are not covered by flood insurance. This is not necessarily a matter of noncompliance, but instead can be a matter of non-applicability of the laws. There are a number of reasons why owners of properties located in areas that experience flooding may not have flood insurance and yet not be in violation of statutory requirements.

- A homeowner may not have a mortgage, or the mortgage may have been originated prior to 1973, and therefore would never have been required by a lender to obtain flood insurance. Surveys show that 42 percent of owner-occupied single-family homes do not have mortgages.
- If a property does have a mortgage, that mortgage might have been originated by a non-Federally regulated institution who did not sell the mortgage to Freddie Mac or Fannie Mae. Properties securing mortgages originated under such circumstances are not required by Federal law to carry flood insurance.
- As a result of FEMA's active remapping of SFHAs over the past decade, it is possible that many of the areas that are now designated SFHAs were not so identified until after the mortgages were originated.
- It is possible that only a portion of a property is in an SFHA. When the house on the property is in the portion which is not in the SFHA, under the 1973 Act flood insurance is not required.
- A homeowner may have received a FEMA Letter of Map Amendment, which essentially allows the lender to waive the flood insurance requirement. The property remains in an SFHA but FEMA recognizes that the property is above the 100-year flood level. This waiver is, however, known only to FEMA, the homeowner, and the lender to whom the homeowner supplied the letter to document the request for flood insurance waiver. The community is not aware of the waiver and the flood map does not reflect this waiver.
- Although an area is designated an SFHA, a community may choose not to participate in the National Flood Insurance Program ("NFIP"). Though Federal flood insurance is not available in a non-participating community and Freddie Mac (and Fannie Mae) are not allowed to purchase mortgages secured by properties in SFHAs of a non-participating community, lenders are allowed to make conventional mortgages in such a community.
- If a portion of an NFIP-participating community has been designated by the Department of the Interior as an undeveloped coastal barrier, Federal flood insurance is not available for structures built after October 1, 1983. The 1968 Act, however, allows Federally-regulated lenders to make conventional mortgages secured by properties on an undeveloped coastal barrier even where such properties are not eligible for flood insurance.
- SFHA maps are difficult to read, and determinations about whether or not a property is in an SFHA can be inconclusive. We have seen different conclusions between an appraiser or a surveyor and a specialized flood hazard determination service. We have also seen different conclusions between two specialized flood hazard determination services. In fact, there seems to be increasing support for the notion that FEMA should be the only entity providing flood zone status determinations, and that SFHA maps should be revised to be easier to read.

FEMA itself has struggled with the causes of noncompliance. In citing its figures for noncompliance FEMA has been historically unable to identify the specific causes for this noncompliance.

It is indicative of the difficulty of the flood insurance issue that even FEMA has not been able to provide information to Freddie Mac specifying which properties were required to have flood insurance but did not, or which lenders had allowed flood insurance coverage to lapse.

FLOOD INSURANCE REQUIREMENTS FOR FREDDIE MAC SELLER/SERVICERS

As noted above, existing Federal law prohibits Freddie Mac from purchasing mortgages secured by SFHA properties that are not covered by flood insurance. Specifically, Section 102 of the 1973 Act prohibits a Federal agency, defined in that Act to include Freddie Mac and Fannie Mae, from purchasing mortgages on SFHA properties that are not covered by flood insurance.

Freddie Mac implements these flood insurance requirements in the same manner as other important underwriting requirements. These implementing procedures are detailed in our *Sellers' and Servicers' Guide,* which require sellers to collect and verify property information, including whether or not flood insurance is needed and that it is in force where required. The description of the requirements regarding flood insurance presented here is very abbreviated. Our requirements are complex, extensive, and involve checks throughout the process of purchasing and servicing a loan. Singling out flood insurance for special treatment during this process could impose a significant burden on Freddie Mac, and yet not improve significantly the compliance level in the flood insurance program generally.

Freddie Mac's underwriting and servicing requirements aim to verify that flood insurance is maintained throughout the life of the mortgage. In many cases, Freddie Mac's requirements exceed the requirements of Federal law. Freddie Mac's policy on flood insurance is as follows for each step in the life of a mortgage:

- *Mortgage Purchases.* All properties must be appraised by qualified appraisers. The appraisal report accompanying each mortgage must identify whether the mortgaged property is located in an SFHA. If it is, the seller warrants to Freddie Mac that the property is covered by flood insurance that meets Freddie Mac's requirements for the life of the mortgage. Freddie Mac's flood insurance requirements exceed statutory requirements. As an example, we require that the insurance for a single family dwelling be for replacement cost or the maximum amount of insurance available for purchase from the NFIP, currently $185,000. The flood insurance coverage required by Freddie Mac is substantially greater than the amount of coverage currently required by law. We are pleased to note that S. 1405 would increase the amount of available coverage.
- *Mortgage Servicing.* Similar to the warranty made by the seller of a mortgage to Freddie Mac, the servicer of such a mortgage warrants to us that a mortgaged property in an SFHA is covered, for the life of the mortgage, by flood insurance that meets our requirements. Once again, Freddie Mac's requirements exceed statutory requirements. We require flood insurance regardless of when FEMA determines that the property is in an SFHA, while the law requires it only if the property is in an SFHA at the time of loan purchase. For this reason, Freddie Mac requires the servicer, when aware that a community has been remapped into an SFHA, to inform all borrowers who had not been required to maintain flood insurance that they must now obtain flood insurance.
- *Servicing Transfers.* When the current servicer ("transferor") sells the servicing of the mortgage to another servicer ("transferee"), the transferee becomes liable for all sale and servicing representations, covenants and warranties with respect to the transferred mortgages, whether or not the transferor had such liability. In the process of the transfer, the transferor must advise all applicable insurers—including flood insurance providers and flood hazard determination services for mortgages subject to life-of-the-loan flood hazard determination contracts—of the transfer. The transferor must also deliver to the transferee records for the transferred mortgages, including copies of transfer notices to property insurers (including flood insurers), copies of flood hazard determination service contracts (if any) and a list of mortgages showing expiration dates of insurance policies (including flood insurance policies) whether or not they are subject to escrow requirements. Within 30 days of the transfer, the transferee must certify to Freddie Mac that it possesses all funds and records pertaining to the transferred mortgages, and assumes responsibility and liability for the correctness of the records.
- *Evidence of Insurance.* The servicer must maintain evidence of up-to-date flood insurance at all times.

Quality Control

In addition to flood insurance requirements enforced at important steps along the way, Freddie Mac policies require an ongoing quality control program. We require quality control to be performed by our seller/servicers and we also conduct quality control examinations ourselves. We require our seller/servicers to conduct quality control reviews of at least 10 percent of their home mortgage production, and they warrant to us that the sample reviewed is representative of their product line and loan origination process. Pursuant to Freddie Mac's quality control requirement, the flood insurance policy or certificate specifically must be reviewed. Of those mortgages selected for review, 10 percent must have a review appraisal or field review performed by an appraiser who is not affiliated with the original appraiser or appraisal firm. Flood exposure, if any, is confirmed by this review.

Any findings, including but not limited to the issue of flood insurance, that raise questions as to the eligibility of the mortgage for sale to Freddie Mac must be reported to Freddie Mac in writing within 30 days. When notified of such noncompliance, Freddie Mac can require the seller to repurchase or replace the defective mortgage or to indemnify Freddie Mac for any losses we suffer because of such deficiency. Frequent or severe cases of noncompliance may lead to the suspension of the seller. No incidences of noncompliance with our flood insurance requirements have been reported.

A sampling last week by Freddie Mac of newly-originated loans shows the following findings for properties identified on an appraisal report as located in an SFHA:

- flood insurance in force—83 percent
- flood insurance waived by (a) survey, (b) recertification by flood hazard determination service, or (c) FEMA—13 percent
- offsite loan files not retrieved in time to respond to sampling—4 percent
- out of compliance—0 percent

Seller/Servicer Annual Certification

A further layer of control exists in Freddie Mac's annual certification requirement for seller/servicers. Within 90 days of its fiscal year-end, each seller/servicer must submit an *Annual Eligibility Certification Report,* in which the CEO or CFO certifies that the seller/servicer is in compliance with Freddie Mac's requirements, including the insurance and quality control requirements mentioned earlier. This certification must be accompanied by an Independent Public Accountant's ("IPA") report of (a) the procedures used for testing the seller/servicers' compliance with Freddie Mac requirements, and (b) the findings derived from such testing, which requires the IPA to audit 10 percent of the mortgages selected for quality control review. This annual certification has confirmed that there have been no reportable incidences of noncompliance with our flood insurance requirements.

Freddie Mac Audits

Freddie Mac's Institutional Audits and Investigations Unit performs on-site underwriting and servicing audits of seller/servicers. Included in these audits are procedures designed to give us assurances that seller/servicers have processes in place to identify mortgaged properties in SFHAs, and to respond to notices of flood zone changes. The seller/servicers examined are chosen on the basis of inadequate performance in one or more important areas. Since 1990, Freddie Mac has audited almost 500 institutions. These audits have produced an aggregate rate of 98 percent compliance with our flood insurance requirements.

Additionally, a random sample review conducted last week of SFHA mortgages located in disaster counties of the nine Midwest States has produced the following compliance statistics:

- flood insurance in force—50 percent
- flood insurance waived because (a) appraisal shows property not in SFHA, (b) another flood hazard determination service shows property not in SFHA, or (c) loan originated prior to 1973 Act—48 percent
- out of compliance—2 percent

Follow-Up Guidance

Freddie Mac recognizes that we are at risk if our seller/servicers do not comply with flood insurance requirements. We have put the extensive procedures outlined above in place to minimize this risk. These procedures are continually reinforced by special announcements, which have been tremendously successful in communicating with our seller/servicers. For example, the Federal Insurance Administrator thanked Freddie Mac for promoting NFIP's 1992 Spring Campaign, writing, "I hope to use your letter as inspiration for some of the other instrumentalities and agencies involved in the Program. . . . Your support over the years has been invaluable. If everyone followed through as you, we'd have eight million policies by now. I hope we continue this partnership for many years to come."

S. 1405, THE NATIONAL FLOOD INSURANCE REFORM ACT OF 1993

As noted briefly above, Freddie Mac supports the effort to clarify and strengthen the flood insurance policies and requirements in the 1968 Act and the 1973 Act. We have, however, two major concerns with S. 1405 in its current form.

Regulations by Office of Federal Housing Enterprise Oversight

Section 201 would require the Director of the Office of Federal Housing Enterprise Oversight to issue regulations directing Freddie Mac to implement procedures reasonably designed to assure that all loans purchased by Freddie Mac that are secured by properties in SFHAs are covered by flood insurance.[1] As noted above, the 1973 Act already prohibits Freddie Mac from purchasing such mortgages unless they are covered by flood insurance. Section 201 of the legislation would, therefore, not expand the scope of flood insurance coverage, but merely add a layer of regulation to existing statutory requirements. Freddie Mac believes that such regulation would be unnecessarily redundant and potentially burdensome.

Freddie Mac purchases hundreds of thousands of mortgages each year, and we subject each to dozens of operational checks and procedures that together ensure that the mortgage meets our standards of quality and our statutory restrictions. The summary of our requirements regarding flood insurance discussed above illustrates the level of complexity and detail Freddie Mac requires of our seller/servicers in determining whether or not to purchase a particular mortgage. As important as flood insurance is, it must be considered as one of the many elements that Freddie Mac must account for in our day-to-day mortgage purchase activities.

While the requirement for regulations may seem to be a minor addition considering the current statutory requirement, Freddie Mac is concerned that the inclusion of such a requirement would indicate Congressional concern with our existing practices and that because of this perception a diligent regulator will feel compelled to change those practices, without regard to our current level of compliance. Our recent surveys indicate such a high level of compliance that we believe regulations are unlikely to produce significant improvement. Further, to select flood insurance for special treatment could lead to increased costs for Freddie Mac, for our seller/servicers, and ultimately for the American homebuyer.

As we have stated throughout this testimony, we believe strongly that we have established that we are in compliance with and exceed the current legal requirements for flood insurance. We would respectfully ask that the subcommittee reconsider placing any additional regulatory burden on us.

Post-Origination Authority

Freddie Mac strongly supports the purpose of Section 204 of S. 1405: to confirm Congressional intent that lenders should be authorized to require borrowers to obtain flood insurance if the Director of FEMA classifies, at any time, the borrower's property as being in an SFHA. For years, Freddie Mac has gone beyond the minimum statutory requirements by also requiring that the institution servicing a loan require the borrower to obtain flood insurance if the property becomes reclassified during the term of the mortgage as being in an SFHA. This so-called "post-origination" authority is clearly in the public interest and makes good business sense. A property currently determined to be in an SFHA is at risk of flood damage, whether or not it was in an SFHA when the mortgage was originated.

Unfortunately, there are some, including the District Attorney in Sacramento, California, who have claimed that lenders do not have the Federal statutory authority to require borrowers to obtain flood insurance if the SFHA is designated after the loan is originated. The uncertainty over the meaning of Federal law has resulted in a reluctance by lenders, who face the risk of litigation, to require borrowers to obtain flood insurance if it is discovered after the mortgage has been originated that the secured property is in an SFHA. In fact, in order to comply with the laws and Congressional intent, a clear legislative provision is necessary to grant lenders authority to enforce flood insurance coverage post-origination. Section 204 as written, however, might be interpreted so as not to achieve this goal.

Freddie Mac has two technical suggestions for improving this section. First, the authority provided by this section only applies to mortgages that were originated by Federally-regulated lenders. This means that the post-origination authority would be unavailable for mortgages purchased by Freddie Mac from many institutions that are not Federally regulated. We suggest that this section be redrafted to provide post-origination authority to institutions servicing loans that have been purchased by Freddie Mac or Fannie Mae. Otherwise, many loans—including loans for which the existing law would have required flood insurance had the properties been in SFHAs at the time of loan origination—will not be covered.

Second, Freddie Mac has an additional suggestion for clarification. As written, the provision might be construed by some to mean that lenders have the authority to place such insurance only if the properties were located in an SFHA at the time that the mortgages were originated, even though that is obviously not its intent. Language should be inserted into the provision making it clear that the authority granted to lenders applies regardless of when the Director of FEMA has identified an SFHA.

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[1] Requirements placed on Freddie Mac by the legislation would also, of course, be placed on Fannie Mae.

CONCLUSION

Freddie Mac applauds the intent of S. 1405 to improve the flood insurance program. We have noted our efforts, as a secondary market participant, to ensure that flood insurance is carried on every mortgage that we purchase where required by law or Freddie Mac guidelines. We have also noted our technical suggestions to the language of the bill as introduced. As always, Freddie Mac stands ready to work with you and your staff on this very important issue.

STATEMENT OF KENNETH L. AUSTIN, JR.

EXECUTIVE VICE PRESIDENT, WENDOVER FUNDING, INC.

Mr. Chairman and Members of the subcommittee, I am Kenneth L. Austin, Jr., Executive Vice President of Wendover Funding, Inc., located in Greensboro, North Carolina. I am also currently serving as Vice Chairman of MBA's Loan Administration Committee.

MBA appreciates the opportunity to appear before you today to testify on S. 1405. MBA supports the objectives of the National Flood Insurance Program and believes that flood insurance is essential to protecting both the property owner and the lender.

In the past, MBA believes that there was little emphasis placed on that program and that has contributed to low compliance. However, I strongly believe that situation has changed in the last several years. I believe that mortgage lenders and servicers, in response to heightened interest in the program are making significant, honest efforts to comply.

However, these efforts have been partially thwarted by the lack of clear legal authority to require flood insurance when there is a remapping after the loan is originated. Mortgage servicers are waiting for clear direction from Congress as to what, precisely, their servicing responsibilities are. Given the potential expense, this is understandable.

Mortgage servicers need to have the tools in order to make this program work. Servicers need to know precisely what form of notice consumers should receive when their property has been found to be within a flood zone. Servicers need to have standard procedures to follow when notifying borrowers about a flood zone change and when they have to force place insurance if the borrower fails to purchase the insurance.

S. 1405 contains guidelines for these notices and for handling consumer disputes about a flood zone designation. These provisions need to be clarified to cover mortgage bankers.

This provision also needs further clarification to preempt State or local laws and regulations that conflict with these requirements. Lenders and servicers should only need to comply with one set of requirements established in the Federal statute. Some State authorities have questioned the legality of requiring flood insurance after the mortgage has been executed, as well as the method of notification, the mechanism for resolving disputes over the flood zone determination, and the requirement that borrowers purchase the insurance at their own expense.

Finally, current law requires a lender to make a flood zone determination only at the time that the loan is originated. After origination, the lender must maintain the insurance for the life of the loan. However, current law does not require lenders or servicers to review loans during their terms to determine if a remapping has brought a property within a flood zone. Although S. 1405 clarifies the law somewhat, MBA is extremely concerned that as currently drafted, it does not extend this clarification to mortgage banking servicers.

The mortgage banking industry strongly supports clarification of these issues in order to allow servicers to enhance their efforts to upgrade compliance with the flood insurance program.

MBA is pleased to see that S. 1405 requires FEMA to publish all map changes, revisions, and amendments. This will give lenders and servicers a single source to rely upon to determine whether mapping changes have taken place.

We believe the most appropriate balance of responsibilities is to provide lenders with the tools to carry out the compliance objectives laid down by S. 1405. Enhanced guidance and explicit legal authority are key to putting lenders in the position to achieve these objectives.

I would like to address another issue. It is often stated that mortgage bankers are not covered by the Federal Flood Insurance Program. It is true that non-bank and non-thrift lenders are not directly mandated by the flood insurance statute to require flood insurance. But mortgage bankers are regulated by function.

By this I mean that mortgage bankers are quite clearly, although indirectly, drawn into compliance. They sell the mortgages they originate to Fannie Mae and Freddie Mac. And they must originate FHA and VA mortgages in compliance strict regulations. Current law requires, and S. 1405 underscores, that FHA and VA loans, as well as loans purchased by Fannie Mae and Freddie Mac must carry flood insurance if the property is located in a flood zone, and that the flood insurance must be maintained for the term of the loan.

I would like to turn now to the compliance requirements. S. 1405 requires lenders to maintain a standardized flood and erosion hazard determination form in every loan file. This form must be less than five years old. MBA has several concerns about these requirements.

First, keep in mind that S. 1405 imposes a significant new servicing responsibility, which is to extend coverage to properties where there has been a remapping after origination. Today, a lender is only required by the law to check a loan at origination and then to maintain coverage.

MBA supports expansion of the law to cover post-origination changes. However, in meeting that expanded compliance burden, we hope that this committee will minimize the impact on outstanding loans that are currently in servicing portfolios.

MBA does not believe that servicers should be required to update existing loan files once the standard hazard determination form is created. This requirement should cover loans originated after the standard hazard determination form is developed. Otherwise, servicers are essentially subject to a *de facto* requirement to perform a portfolio review in order to place the appropriate standard form in each and every loan file.

For outstanding loans, MBA believes servicers should only be required to provide relevant flood information, as it is currently contained in the loan files, whenever that information is requested.

Second, S. 1405 gives the flood certification a five-year lifetime. Again, for loans outstanding, this is a significant additional servicing burden. MBA believes this requirement should only apply to loans originated after enactment. Lenders can then require borrowers to purchase a certification contract that will be good for the life of the loan.

If indeed it is the intent of S. 1405 that all servicers must maintain the standard form and go back into outstanding loan files to insert this new information and to recertify this information every five years, then MBA strongly believes that an amendment should be added to allow servicers to pass the cost of providing this standard form through to borrowers.

In summary, MBA supports the goals of the National Flood Insurance Program. The objective of ensuring adequate flood insurance where necessary is one that the industry embraces. MBA believes that consumers benefit when servicers assume the burden to determine flood zone coverage. The Federal program, as well as State and local authorities, share in that benefit.

MBA appreciates this opportunity to testify and express our views on S. 1405. We would be pleased to answer any questions or to provide further information for the hearing record.

TESTIMONY OF LARRY W. PALMER

Director, Flood Insurance

Redland Insurance Company

Mr. Chairman and Distinguished Members of the subcommittee, I am Larry W. Palmer, Director of Flood Insurance for Redland Insurance Company, an Iowa domicile property and casualty company headquartered in Council Bluffs, Iowa. Our primary insurance products are directed towards the heartland. We provide WYO Federal flood insurance primarily in the upper Midwest but with some flood insurance policies issued in the majority of the forty-three States that we are currently admitted to transact the business of insurance.

I am testifying today on behalf of Redland Insurance Company and its participation in the National Flood Insurance Program (NFIP) and in particular our experience this summer with the devastating floods that occurred within the very core of our marketing region. Furthermore, I am also representing the Flood Insurance Servicing Companies Association of America, Inc. (FISCAA) of which I am a charter member, Director and Officer, speaking on behalf of its member companies that collectively have issued over 700,000 (27%) of the current 2.6 million NFIP flood insurance policies issued nationwide, primarily through independent insurance agents.

My personal experience with the NFIP and its "Write Your Own" (WYO) initiative started with its very inception in 1983 and has remained unbroken since that time. I am currently a member of the National WYO Flood Marketing Committee and have served on numerous NFIP/WYO conference panels and committees over the past ten years that have addressed various issues and concerns affecting the NFIP.

My focus today is the issue of compliance with the *National Flood Insurance Act of 1968* and as amended the *Flood Disaster Protection Act of 1973* and their relationship to the pending Senate Bill 1405, cited more precisely as the *National Flood Insurance Reform Act of 1993.*

I share some of Senator Kerry's concerns expressed in his statement in the August 6, 1993 Congressional Record (S10857 et. seq.). Redland Insurance Company and FISCAA strongly support legislation that will strengthen the NFIP, increase compliance, and provide incentives for community floodplain management and mitigation assistance. I appreciate the point that Senator Kerry makes in his Congressional Record statement by quoting from the Bible about the foolish man who ". . . builds his house upon the sand . . ." and the relationship to Congress providing subsidized insurance in general and that comparison to the emergency supplemental appropriations of over $5 billion for the flood disaster relief to the upper Midwest in the summer of 1993. However, it seems appropriate for me to correct the record today by pointing out that the majority of folks in the upper Midwest build their homes on soil that supports their main "home place" that in many cases they have resided in for years. The house on average is forty years old (pre-FIRM by NFIP standards) and has a basement or storm cellar, is constructed from wood with clapboard siding and does not afford a breath taking view of any ocean body of water. The house is typical of a home in Valley Junction, Cedar Rapids or Hamburg, Iowa. Of course there are similar homes, but without basements, in the river cities such as Prairie du Chien, Wisconsin, Davenport and Keokuk, Iowa, and the small towns and hamlets in and around the greater St. Louis, Missouri area all located on the *Mississippi River.* Furthermore, Sioux City, Council Bluffs, and Carter Lake, Iowa, Omaha, Nebraska and Kansas City, Missouri and Kansas all on the *Missouri River,* plus thousands of small towns and hamlets all along the many small rivers that drain into the "Mighty Mo" and the "Big Muddy." The value of these structures on average is less than $70,000.

There is no mass migration of people to retire or build a second recreational home in any of these areas as above mentioned. In many cases their main "home place" was built before the NFIP even existed. The problem is, however, they were built in the Special Flood Hazard Areas (SFHA) as were later determined by the NFIP. There was not when they were built nor is there now affordable and/or generally available private sector flood insurance for these homeowners! I cannot believe that these families continue to live there because flood insurance is available now from the NFIP. They live there simply because their "home place" is their roots! It is not a whole lot different than why the Bushes of Kennebuckport, Maine and the Kennedy's of Hyannisport, Massachusetts and many other Americans maintain their homes where they do.

I have been following the reform legislation affecting the NFIP since Congressman Bereuter of Nebraska introduced HR1236 in 1990 and HR62 in January, 1993, which, I might add, are both very similar in many respects to Senate Bill 1405 particularly with the compliance requirements. I have watched as the bills "gridlocked" while major weather catastrophes have inflicted devastating floods on our country over the past three years and wondered when such an event would strike the Midwest and how soon legislation would be enacted to increase compliance. With reference to compliance, I have attached a graph to my written testimony that I trust you will find self-explanatory relative to policies issued or the lack thereof within the eight States affected by the Midwestern summer floods.

After Hurricane Andrew struck South Florida in August of 1992 I doubt if anybody noticed the increased rainy weather patterns developing over the upper Midwest. The sixteen inch rain within a twenty-four hour period south and west of Des Moines on *September 15, 1992* hardly raised a headline beyond the State's boundaries. It was primarily rural flooding! Then the winter of 1992/1993 saw increased snow fall over much of the region in the upper Midwest. It was then that I began to realize the Midwest drought of the past five years was coming to an abrupt end. It was in late February and early March of 1993 that Redland Insurance Company started experiencing its first above normal seasonal flooding events. The early thaw was causing ice jams on the Platte River just to the west of Omaha, Nebraska. Robert and Mary Kriss of rural Gretna, Nebraska lost their home completely when ice jams diverted the main channel of the Platte River and ice chunks flowing in water pounded their home of over twenty years off its foundation and took it and its contents out into the main channel. Many personal belongings that could never be replaced were lost forever! The Kriss family had flood insurance but others in the surrounding area did not. Unusual circumstances—not really! All these "non-headlines" flooding events happen to the extent that on a nationwide basis over eighty percent of the national catastrophes are flood related. Small towns and hamlets on rivers you have never heard of incur flood damage in the millions of dollars every year. For example, Crawford and Howells, Nebraska in May and June of 1991 experienced significant flooding in their communities. No Presidentially declared disaster to help these folks—just loans because very few people had flood insurance to cover their damage.

My purpose today is to add a new perspective to your thinking about the NFIP and its value to the average citizen in the Midwest as compared to those who build upon the sand. For example, erosion set backs to someone from Hamburg, Iowa may be a term denoting how a farmer terraces the land to maintain moisture in the soil in dry times and prevent soil erosion in wet. What about thirty and sixty year erosion set backs—our Midwestern residents may ask; do rivers erode land faster than the ocean erodes the beach? And what about environmental issues? No, we are not affected by the Florida Keys "mule deer" issue, but we do have concerns about the endangered sand hill cranes, the pallid sturgeon, the burying beetle and even the prairie fringed orchid. But that does not have anything to do with why *only one in ten properties* located in the Special Flood Hazard Area in the Midwest have NFIP flood insurance.

How does all this balance with increased compliance, incentives for community floodplain management and mitigation assistance as proposed in S. 1405? Simply stated, until the flooding of "biblical proportions" struck the Midwest this summer the average homeowner *did not realize that*:

1. Their dwelling was in a designated flood hazard area (SFHA) or even that their community was participating in the NFIP;
2. Their standard homeowners policy excluded coverage for losses incurred by the flooding peril; and
3. If they have a mortgage that was effective after 1974 were not aware that flood insurance was required.

Furthermore, my guess is that statistics will confirm many homes in the Midwest have their mortgages paid off and will choose not to purchase flood insurance voluntarily because they do not perceive that the risk exists for their home even after the summer floods or feel the value of coverage as it relates to the average premium of $300 is simply not worth the expense. Many complaints I receive from homeowners in the Midwest relates to the fact that the NFIP flood insurance policy excludes coverage for contents and finished rooms in their basements. Basements are fairly common in the Midwest and many families that cannot afford to trade up to larger homes as their family size and needs warrant simply choose to build that extra bedroom, office and/or recreational room in the basement, complete with wood paneling, carpet, nice furniture and of course the big TV to watch the weekend sports or simply a playroom for the kids. Regardless of how you describe it there is no flood coverage for it! The coverage does not exist because the rates under the NFIP Program have not taken that exposure into consideration for coverage. I appreciate that fact and understand why the NFIP does not provide the coverage, but tell that to the homeowner that equates the real value of flood insurance to the area (the basement) most likely to sustain the greatest damage from flood. I do not have a solution to this issue but would be neglecting my responsibilities here today if I did not bring that concern to your attention! I also understand why the NFIP wants to encourage people in the floodplains to not improve and have contents in the areas most likely to flood in their homes. Worse yet, if you have issued an NFIP flood policy because the lender requires it, but have to deny coverage after the flood waters have filled up the basement. It is true the main items in the basement such as the building foundation elements, furnace, hot water heater, electrical junction boxes, sump pumps, etc. are covered but that does not make Mr. Rush Ridings of Papillion, Nebraska any happier about his flood loss this summer. "Our family room is one of our main living areas," says Mr. Ridings. He had flood insurance, for which I believe he was at least better off than his neighbors who did not, but this coverage void did not help him.

Nevertheless, I still believe the average homeowner that resides in the special flood hazard area is far better off with flood insurance than without. The NFIP has helped hundreds of thousands of Americans rebuild their homes devastated by floods over the years and even as we speak that process is continuing today. So far Redland Insurance Company has in excess of 400 flood claim losses reported since June 1, 1993 and directly related to the summer floods in the Midwest. What that means is that there are many thousands more that do not have flood insurance. It is still too early to draw any final conclusions, but it is my early guess that the average loss in the Midwest for building coverage will be somewhere between $10,000 and $20,000 and if the homeowner had purchased contents coverage, that loss will be somewhere between $5,000 and $15,000. Approximately half of these claims have been paid and are closed. However the folks that do not have insurance will have to depend on the cumbersome and often time-delayed disaster payment mechanism as their only alternative. The irony of this situation is that just the county of Pinellas, Florida (St. Petersburg area) has more active NFIP flood policies (*93,000*) than all flood policies currently issued in the entire eight States (*82,000*) in the upper Midwest that were declared disaster areas this summer by the President. I believe, the taxpayer in general and more importantly that family that has an NFIP flood policy, is much better off with flood insurance regardless of where they reside. Our goal and the wisdom of this committee's final judgment on Senate Bill 1405 will be the test of that. Therefore, on behalf of Redland Insurance Company I support passage of Senate Bill 1405, also known as the *National Flood Insurance Reform Act of 1993.* Specific points and concerns that I would like you to consider are the following:

Title II—Compliance and Increased Participation:

- Lender compliance, vigorously enforced is vital to the success of the National Flood Insurance Program.
- Escrow for flood insurance premiums, in order to prevent non-renewals of flood policies, is the only way to quantify the renewals and assure compliance and that the premiums are available at the time of renewal. Specific examples related to the summer flooding, was to discover families that were flooded in the West Des Moines/Valley Junction area in 1990 that obtain disaster assistance and were required to get flood insurance as part of their loan but unilaterally chose to not renew their flood policy after the first year. Those same families have once again been flooded in the summer of 1993 and are now seeking *additional* disaster assistance.
- Include language that will prevent the lending institutions from waiving the requirements for flood insurance on any structure located in the Special Flood Hazard Areas regardless of who the owner is.
- Include language that will provide reasonable notice, at least ten days, to the borrower that flood insurance is required before closing. This will afford the borrower the opportunity to consult with their agent and obtain the necessary information to have a properly completed flood insurance application at least prior to the closing date.

Title III—Ratings and Incentives for Community Floodplain Management Programs:

- Community Rating System (CRS), a must along with public awareness promotions, so that the general public is aware of the flood danger and whether or not they live within "harms way". As a result of the Midwestern flooding, it appeared that many homeowners had a false sense of security that their levies would protect them from flood danger and they chose not to get flood insurance. Many levies throughout the upper Midwest did fail and were breached during the massive flooding event that transpired over a four or five week period.
- Do not believe that the full cost of flood zone determinations should be passed on to the borrower. I would like to make note, as part of this testimony, that it was recently announced by the Federal Deposit Insurance Corporation (FDIC) that the Nation's banks had posted their second-highest profit ever during the April/June quarter which amounted to *$10.4 billion. That is twice the amount of disaster aid appropriated for the Midwest flooding.* The previous quarter also netted a *record profit* of *$10.9 billion.* I believe the lending institutions in this country can afford to pay this cost and not further impose additional expense upon the homeowner that will have to comply with this legislation by paying the annual flood insurance premium.
- Support the imposition of Federal penalties on lenders that demonstrated a continued business practice of noncompliance. Believe that the $350 fine is simply not enough to assure serious compliance.

Title IV—Mitigation of Flood and Erosion Risk:

- Agree that mitigation assistance and programs be encouraged and implemented nationwide and that riverine erosion studies be conducted to determine if there is a comparable NFIP fund exposure as compared to the coastal erosion issues.

- Support termination of erosion-threaten structure programs like Upton-Jones. This is a liberalization of the NFIP coverage and is not considered insurance because it requires NFIP to pay claims in anticipation of losses.

Title V—Flood Insurance Task Force:

- Support establishment of Task Force.

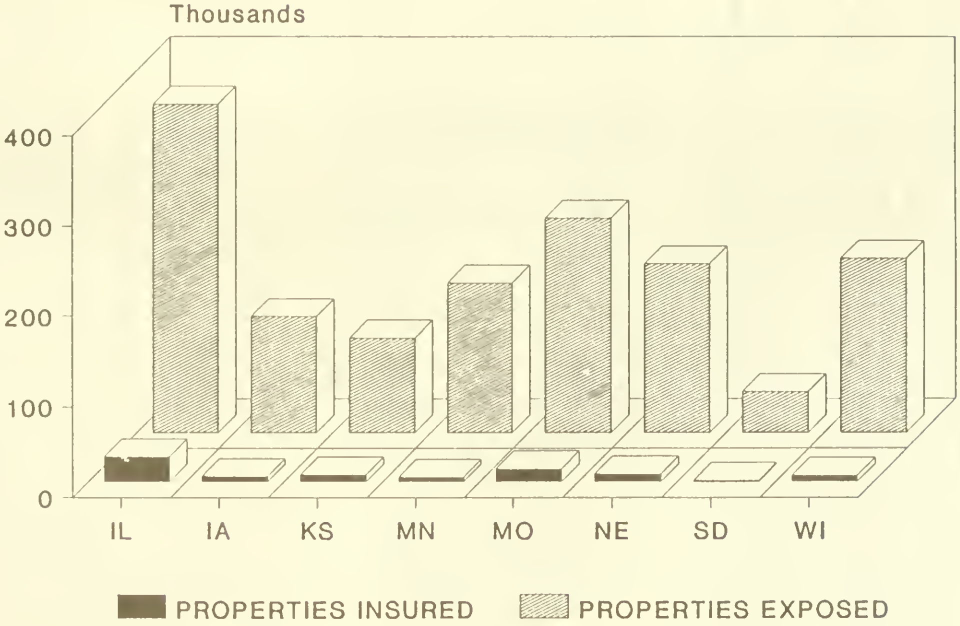
Title VI—Miscellaneous Provisions:

- Support increase in maximum insurance coverage limits.
- Recommend that you require replacement cost coverages rather than limiting coverage to the amount outstanding on the mortgage. For a homeowner who has nearly paid off his or her loan and consequently has minimum flood coverage, he or she is woefully exposed when the flood does come.
- Support NFIP identification in mapping of flood areas around the country as an important tool in both mitigation efforts and public awareness, not to mention the issuance of insurance.
- Believe that the $25 Federal service fee, that the homeowner is required to pay in addition to the flood premium, should have more direct benefit back to the homeowner in such areas as making it very easy for the homeowner to determine whether or not their property is in a special flood hazard area.
- The FIA has expressed concern that efforts by many States and local governments to impose taxes and levies upon NFIP flood insurance premiums collected by WYO companies, beyond the premium tax which helps States regulate insurance company solvencies and license insurance agents and brokers, may eventually lead to Congressional action which pre-empts all State and local taxation, including the premium tax which funds a very vital service. We recommend specific language to exempt premiums collected for deposit in the National Flood Insurance Fund from all taxes except for the aforementioned premium tax.

In closing, I would once again like to refer to that part of the Bible, specifically the New Testament, Matthew 7:24 that Senator Kerry has drawn the parable about the house built upon the sand wherein it is also suggested that it is indeed a wiseman that builds his house upon a more solid foundation. Perhaps the subcommittee will see the wisdom of moving the NFIP on to a more solid foundation by leading the way towards passage of Senate Bill 1405. Mr. Chairman, that concludes my statement. I will be happy to address any questions which you or the other Members of the subcommittee may have.

MIDWEST FLOODING 1993

PROPERTIES INSURED VS PROPERTIES EXPOSED



PROPERTIES INSURED AS OF JUNE 1993

STATEMENT OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

My name is Thomas N. "Tommy" Thompson and I am a builder from Owensboro, Kentucky. I am currently serving as First Vice President of the National Association of Home Builders (NAHB), an association representing 165,000 firms engaged in all aspects of home building and land development. I am pleased to have the opportunity to appear before the Senate Banking Subcommittee on Housing and Urban Affairs, and to comment on S. 1405, the National Flood Insurance Reform Act of 1993.

I am a second generation builder and current President of Thompson Homes. My company builds approximately fifty single-family homes each year. The company is also involved in multifamily housing, seniors housing, land development, property management, and general contracting. As a Kentucky builder, I am also well acquainted with the workings of the National Flood Insurance Program.

I. THE NATIONAL FLOOD INSURANCE PROGRAM

NAHB applauds the sponsor(s) of S. 1405 for their efforts to address the financial soundness of the National Flood Insurance Program (NFIP). NAHB supports the goals of the NFIP to provide affordable flood insurance for property subject to flood hazards. However, a Congressional Research Service Study indicates that only 1.7 million of an estimated 11 million households in flood hazard areas have flood insurance. In light of this data, NAHB concurs with provisions in S. 1405 which seek to increase NFIP participation through strengthened lender compliance provisions.

Hazard mitigation also plays a critical role in maintaining the fund's solvency. NAHB supports the Federal Emergency Management Agency (FEMA) construction standards and practices for flood mitigation. These flood mitigation standards require the lowest habitable area of a structure to be at or above the 100-year flood elevation. Through the NFIP and the flood mitigation standards, builders are afforded a cost effective and technically feasible means of minimizing damage to structures caused by flooding at a price affordable to the housing consumer. The NFIP, as it relates to construction that has occurred after development of Flood Insurance Rate Maps, (or post-FIRM construction) works relatively well. Flood Insurance Rate Maps were first issued in 1975, so that any subsequent construction conforms to the 100-year flood elevation requirements.

Let me also acknowledge that home builders and the building community at large have a responsibility to *continue* developing better construction techniques for coastal development. We have learned a great deal at NAHB and use this information to educate our members. Obviously, the more we learn about building structures that can withstand severe wind and rain, the less damage will be sustained thereby reducing insurance claims and repair expenses.

II. PROPOSED REFORMS TO THE NATIONAL FLOOD INSURANCE PROGRAM S. 1405, THE NATIONAL FLOOD INSURANCE REFORM ACT OF 1993

Before getting into specific provisions of S. 1405, we want to formally acknowledge and thank Senator John Kerry and Senator Alfonse D'Amato for their work on this legislation. NAHB has no formal policy on some of the new provisions in S. 1405, such as Sec. 406 in Title IV (NAHB expects to adopt policy on these issues during our Fall Board of Directors meeting September 9–13). However, S. 1405 no longer contains express prohibitions on coastal construction and therefore poses few, if any, of the constitutional "takings" issues under the Fifth Amendment, unlike its predecessors. This bill also represents a significant step towards preserving the traditional role of State and local government control over their resources, and land use decisions. We also believe S. 1405 appears to recognize alternative forms of viable erosion mitigation and provides the flexibility for State and local governments to determine how to manage their coastline as recommended by the National Research Council (NRC) report entitled *Managing Coastal Erosion.*

Title III—Ratings and Incentives for Community Floodplain Management Programs

Section 301

Section 301 establishes a Community Rating System (CRS) to encourage communities participating in the NFIP to exceed the existing floodplain and erosion management measures in exchange for lower premiums. In effect, this title codifies existing practice wherein the Federal Insurance Administration (FIA) allows the local and/or State government to determine its building practices and codes, provided that those regulations exceed the Federal Insurance Administration's minimum standards. Sec. 301 expands this current practice to a community's erosion management practices as well. NAHB supports this provision in concept because it allows the community to decide how stringent its floodplain and erosion management measures might be. However we would want clarification that the full range of flood and erosion management techniques would be eligible for credits under the Community Rating System as established by S. 1405.

Title IV—Mitigation of Flood and Erosion Risks

Section 403

Sec. 403 establishes a program for assistance for planning and carrying out State and local programs to reduce flood and erosion risk. This provision appears to complement Sec. 301 of Title III, codifying the Community Rating System, by providing additional incentives to States and localities (in the form of financial assistance) to take steps to control flood and erosion risk beyond the minimum NFIP requirements. Our comment here, similar to Title III, is that the full range of erosion mitigation options be available to States and local communities. S. 1405 does not explicitly include or exclude these options, it simply describes some activities for which States and communities may receive assistance including elevation, relocation and demolition. NAHB believes the language should include "erosion control measures," as defined in Title I (12) of S. 1405.

NAHB believes a legislative approach should allow the State or local entity to determine which approach it believes is best for the community. As a matter of public policy, State and local communities should be given the flexibility to determine which forms of mitigation control suit their purposes. Beach communities are aware of the importance of their beaches and often regulate their sand resources to protect property. Often, communities embark on massive campaigns to preserve this treasured resource. Various projects in coastal States demonstrate that structural and nonstructural measures can be employed with great success. Under proper management, coastal development can minimize the effects of coastal storms, be aesthetically appealing, environmentally safe, and reduce any financial cost to the general public. In fact, such development can be a positive benefit to a community, a source of property or sales tax revenue and an asset to the area's economic development. We urge that local and State governments be given flexibility to operate under the coastal erosion management program envisioned by S. 1405.

Section 406

Sec. 406 prohibits FEMA from making flood insurance available within the 30-year erosion areas for any new structure or additions to existing structures if that addition makes the structure not "readily movable." Sec. 406 also prohibits flood insurance coverage in between the 30- and 60-year erosion zones for any nonresidential structure, residential structure that is not "readily movable" or additions to existing structures which renders the structure not "readily movable."

Unlike its legislative predecessors, Sec. 406 does not contain an outright prohibition on residential and commercial construction. Sec. 406, therefore, does not trigger the Fifth Amendment of the Constitution prohibiting a "taking" of property without just compensation. However, prohibiting flood insurance coverage will undeniably have a "chilling effect" on construction. NAHB is compelled to question this provision not only because of its impact on our industry. Equally important, Sec. 406, appears to contradict the very public policy purpose driving the NFIP, and Title II of S. 1405, which is to *increase participation* in the NFIP.

While NAHB has no formal policy on Sec. 406 at the time of this writing, but expects to prior to the presentation of our oral statement at the hearing, we would argue that flood insurance should be available for structures in these zones. This policy would be equitable, consistent with the policy goals of the NFIP and, at the same time, would prevent or mitigate any adverse impact to a community's existing and potential tax base especially those communities dependent on revenues brought in by tourism and their sea shore.

Sec. 406 makes reference to certain "readily movable" structures as eligible for insurance under this scheme. Title I, 102(a)(11) defines "readily movable structure" as "a small permanent structure of less than 5,000 square feet that is designed, sited, and built to accomplish relocation at a reasonable cost relative to other structures of the same size and construction and that has access of sufficient width and acceptable grade to permit such relocation." A literal reading does not indicate what the authors intend to be "readily movable." It is difficult to comment on this definition, but NAHB questions the reference to cost in this definition. Apparently, under S. 1405, the home owner would bear the cost of relocating a structure.

Title VI—Miscellaneous Provisions

Section 601

Sec. 601 raises the maximum flood insurance coverage available under the NFIP. NAHB agrees that current law provides inadequate insurance coverage to existing properties. We are curious as to the methodology by which these limits were established and question whether they should not be raised further to more accurately reflect the value of some of the properties insured.

Section 604(a)

Section 604(a) of S. 1405 also requires FEMA to assess the need to revise and update the flood insurance rate maps. States or communities may require FEMA to revise its flood insurance rate map if the State or local unit of government assumes 50 percent of the cost of the map revision. Currently, the expenses for map revisions are paid out of the fund but there is no guarantee FEMA will respond to a map revision request. NAHB agrees with the purpose of Sec. 604(a), but questions whether the associated costs to the community will serve as a disincentive to communities to request map revisions when the maps are in fact out of date.

Section 604(b)

Sec. 604(b) requires FEMA to identify and map all "erosion hazard areas" within five years of enactment of the legislation. First, it is unclear whether this provision applies to both riverine and coastal erosion hazard areas. Nowhere in the legislation is it apparent. Tidal waters in the United States encompass 88,633 statute miles. NAHB questions whether FEMA has the resources to mount this monumental undertaking with 208 full-time FIA employees. NAHB wonders whether it is realistic to expect FEMA to perform these additional tasks.

In addition, FEMA is directed to give mapping priority to areas that are at greatest risk from erosion and to map these erosion hazard areas within two years. Do FEMA or the sponsors of this legislation know at present the number and location of the communities slated for priority mapping under this section?

More problematic, from a builder's perspective, is that part of Sec. 604(b) which calls upon FEMA to give special consideration to revision of erosion hazard areas where that area recently experiences an increase in its erosion rate due to a storm or extraordinary event creating a change in the erosion rate. This provision ignores "real life" situations for builders who begin a project that may take three years to complete. While a builder would receive a permit for starting construction and intend development to take place within certain erosion zones, FEMA remapping before completion of a project could conceivably change the zone in which the builder was developing. In other words, a builder might in good faith begin construction where flood insurance protection is permissible and the zone could be reconfigured such that the subsequent construction is taking place where no flood insurance coverage would be permissible. Perhaps the authors of this legislation could reach agreement regarding the "grandfathering" of these projects or some alternative which would not place a builder and home buyer in such a situation. Also, if flood insurance were available within the erosion zones, this problem could be partially resolved.

CONCLUSION

Considering the multitude of interests and values as well as the technical, economic, and political dynamics which all weigh in to guide coastal development, NAHB believes that a sound program should require State and local participation in concert with the Federal Government. Furthermore, a sound program must move beyond the simple solution of building setbacks, but must include improved construction techniques, such as improved foundations, as well as beach improvements, such as properly designed and maintained seawalls, and nonstructural remedies, such as beach nourishment and vegetation efforts.

Before the legislation advances, we would like to work with the subcommittee and sponsors in the hopes of answering some of the questions raised here and incorporating these suggestions. We stand ready to assist you in any way we can.

STATEMENT OF BETH MILLEMANN

EXECUTIVE DIRECTOR, COAST ALLIANCE

Good afternoon. My name is Beth Millemann, and I am Executive Director of the Coast Alliance, a national environmental coalition that works to protect the resources of the Nation's four coasts: Atlantic, Pacific, Great Lakes and Gulf of Mexico. I greatly appreciate the opportunity to testify on S. 1405, the "National Flood Insurance Reform Act of 1993." My testimony today is presented on behalf of the Coast Alliance and 85 other State, regional and national conservation, fishing, labor and citizen organizations.

I would like to commend Chairman Sarbanes and the Members of the Subcommittee on Housing and Urban Affairs for holding today's hearing. S. 1405 presents a crucial opportunity for Congress to extend a hand to flood-prone communities along the Mississippi and other rivers, and to towns and cities along the Great Lakes and the ocean coasts. S. 1405 would meet an equally important goal of protecting the U.S. taxpayer from *another* bail-out of the financially troubled National Flood Insurance Program. S. 1405 would also help protect citizens from exposure to deadly acts of nature by withdrawing government support for development in *the most hazardous area of the United States*: the thin band of land—subject to hurricanes, nor'easters, storms, floods and erosion—that edges the Great Lakes and the seas.

In short, S. 1405 would make the National Flood Insurance Program do what Congress intended it to 25 years ago when it created the Program.

There is no time to waste in putting the Flood Insurance Program on the right path. In the last year, nature has reminded us about the perils of building in the floodplain. The recent Mississippi River floods and Hurricane Emily, coming on the heels of last year's Hurricanes Andrew and Iniki and December nor'easter, have illustrated the danger to public safety, the huge drain on Federal financial resources, and the degradation to aquatic resources that comes with development that is too close to the water's edge.

MIDWEST FLOODS: ANOTHER FLOOD INSURANCE FUND DRAIN

The latest damage estimates from the Midwest flooding range from $10–$15 billion, with 40,000–55,000 homes and businesses affected. Some estimates from the Federal Emergency Management Agency (FEMA) indicate that as many as 80 percent of the affected buildings may have suffered "substantial damage:" that is, damage in excess of 50 percent of the building's value. Many of these buildings were inundated for long periods of time, and many are still under water, weeks after the floodwaters first arrived.

Major losses were sustained in both urban and rural areas throughout the nine States affected by the flood (Missouri, Illinois, Wisconsin, Minnesota, Iowa, South Dakota, Nebraska, Kansas and North Dakota.) FEMA currently estimates that Federal flood insurance claims will be between $50–100 million, with expenditures toward the $100 million mark more likely.

It is therefore likely that the Mississippi River floods will join other recent storms in cutting multi-million dollar swathes through the Flood Insurance Fund. This includes the 1992 December nor'easter, which generated more than $265 million in Federal flood insurance claims, and Hurricanes Andrew and Iniki, which caused over $170 million in Federal flood insurance claims. And the 1989 Hurricane Hugo sapped $352 million from the Flood Insurance Fund.

In fact, the Flood Insurance Fund has been steadily drained since Hurricane Hugo struck, dropping from $550 million in reserves in 1989, to the *edge of a deficit* at which the Fund stands today. It is clear that the National Flood Insurance Program is in need of immediate, serious attention. Congressional action or inaction will not stop acts of nature: rivers will continue to flood, and storms and hurricanes will continue to hit the coasts. However, Congressional action *can* help protect the American taxpayer, public safety and aquatic resources from exposure to hazard-prone floodplain development.

The floodplains along the Mississippi River, while not as densely populated as the Nation's coasts, have a significant number of Federal flood insurance policies in effect: roughly 38,500 in the nine States affected by the floods. As of September 7, roughly 9,300 Federal flood insurance claims already had been filed against the total number of policies in effect:

	Claims Filed	*Policies in Effect*
Missouri	4,889	12,000
Illinois	2,010	7,000
Wisconsin	123	5,000
Minnesota	187	1,500
Iowa	1,074	6,500
South Dakota	68	280
Nebraska	307	4,000
Kansas	548	2,000
North Dakota	76	250

It can take three to six months for claims to be received and processed from a flood event and in the case of the Mississippi, many homes and businesses are still under water. Therefore, it is likely that many more claims will be made against the Flood Insurance Fund in the next several months.

HURRICANE EMILY

Damage estimates from Hurricane Emily are still very preliminary, but indications are that at least $10 million in damage to Hatteras Island alone occurred. Had Emily followed a different path, or built up the force of Hurricane Andrew, the damages could have been extraordinary.

FLOOD INSURANCE REFORM INITIATIVES IN THE 102ND CONGRESS

The threat to the Flood Insurance Fund from coastal storms and riverine flooding has long been recognized. In May 1991, the House of Representatives passed by a vote of 388 to 18 legislation to reform the National Flood Insurance Program. That legislation was supported by more than 100 conservation groups, the Coastal States Organization, and the Association of State Floodplain Managers.

The legislation was the culmination of four years of examination of the Program, bipartisan leadership, and information generated during a series of 10 Congressional hearings. One of the driving forces behind the legislation was the recognition that the National Flood Insurance Program had abjectly failed to meet the land-management mandate Congress gave it when it was created in 1968, and that the failure to meet this mandate contributes to the Flood Insurance Fund's dangerous inadequacy. When the legislation passed the House two years ago, there was $360 million in the Flood Insurance Fund. Today, the Fund is sinking ever closer to the red.

The Federal Treasury cannot afford, the coastal and riverine environment cannot afford, and public safety cannot afford to wait any longer for action on the National Flood Insurance Program.

THE NATIONAL FLOOD INSURANCE PROGRAM'S FAILED MANDATE

In 1968, Congress acted to end the cycle of development and redevelopment in flood-prone areas by creating the National Flood Insurance Program. According to the law, *written 25 years ago,* "annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards." The law further states that:

> "the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits . . ."

Congress created the National Flood Insurance Program with a clear purpose:

> "It is the further purpose of this chapter to (1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards . . . and (5) authorize continuing studies of flood hazards in order to provide for a constant reappraisal of the flood insurance program and its effect on land use requirements."

It is clear that one of the reasons the National Flood Insurance Program was created was to promote State and local land-use controls to minimize flood loss and guide development away from flood-prone areas. In essence, the Program was supposed to strike a deal: in exchange for Federal flood insurance, flood-prone communities would take measures to reduce, over time, the concentration of flood-prone structures. The sale of flood insurance policies would generate money to offset Federal disaster relief payments for flood-prone buildings already in place. And, in the long run, new construction would be sited a safe distance from the water so that disaster relief would become less and less necessary. This would benefit the Federal Treasury, help save lives, and we have subsequently discovered, protect aquatic resources from the pollution and habitat loss caused by shorefront construction.

But it hasn't worked out that way. The National Flood Insurance Program is now one of the Nation's largest domestic liabilities behind the Social Security System. It has roughly $210 billion worth of insurance in force, composed of about 2.5 million policies. And instead of *discouraging* coastal development, more than three-quarters of the policies *insure* development along the marine and Great Lakes coasts.

The National Flood Insurance Program, along with the other 50 Federal programs that provide Federal funding for coastal development and redevelopment, has become an essential linchpin of shoreline construction.

FEMA's Federal Insurance Administration (FIA) admitted in a 1981 NOAA review that, "what is indisputable is that the National Flood Insurance Program has *not* restricted coastal development to any measurable degree."

The U.S. General Accounting Office (GAO) concluded in 1982 that the Federal Flood Insurance Program provides coastal developers with a "financial safety net" and therefore, an incentive to develop in high-risk areas.

The Department of Interior analyzed coastal development patterns from the 1940s to the mid-1980s and concluded that, "increased affluence and Federal subsidies are among the primary causes for the extensive development of our beaches in the past four decades."

More than a decade ago, the GAO recommended to Congress that it, "reconsider whether it is desirable public policy to continue providing flood insurance" along the water's edge in light of the "unavoidable potential for loss of life and destruction of property in these areas." That recommendation was made in 1982, when the verdict on the Program was already coming in from NOAA, the Department of Interior, and FEMA itself. The Flood Insurance Fund is now on the verge of bankruptcy, crippled by bills from yesterday's storms and facing a new generation of hurricanes it cannot hope to weather unless Congress acts on the GAO's 11-year-old recommendation and moves swiftly to reform the Program.

YESTERDAY'S STORMS, TOMORROW'S HURRICANES

Last year's Hurricane Andrew currently holds the title of the most expensive natural disaster in the history of the United States, far outstripping other notable tragedies, such as the 1906 San Francisco earthquake. But many hurricanes and storms have caused enormous damage and loss of life in the years leading up to Andrew.

Flooding has claimed more than 21,000 lives in this century alone. Storms other than hurricanes are common to different coastal areas, and have an impact on public safety. For example, tsunamis, massive earthquake-driven tidal waves, have inundated areas of Hawaii, killing 61 people in 1960. Tsunamis have also reached California and Alaska in recent years. And seiches in the Great Lakes—storm-driven waves reaching 13.5 feet—have caused great harm in the Great Lakes area, which is the most densely populated region per shoreline mile in the United States.

But a huge portion of the American population faces the threat of hurricanes. The coastal population at risk from the deadly storms has doubled from that of the 1950s and 1960s. There are now 44 million people living in hurricane-prone coastal counties from Texas to Maine.

A storm like Hurricane Andrew has been wrongly viewed by some as an anomaly. The National Hurricane Conference announced in 1992 that the Nation was beginning a new 25-year cycle of "super hurricanes," and within a year of the announcement, Hurricanes Andrew, Iniki and Emily, and the December nor'easter, struck.

The past 25 years have been relatively free of major hurricanes, according to the National Hurricane Conference, but the beginning of the new quarter-century hurricane cycle poses an enormous threat to the huge concentration of coastal development. It is important to note that the National Flood Insurance Program's entire existence has corresponded with the 25-year hurricane lull. Without immediate attention, the Fund cannot sustain another several decades of storms.

The storms that have occurred over the past several years, while not "super hurricanes," have caused enormous damage:

- On the night of August 17–18, 1983, Hurricane Alicia came ashore near Galveston, Texas, causing 3,243 injuries and 17 deaths. The price tag: $1.27 billion worth of insured losses in Texas. Of those losses, $119.1 million were spent on the more than 14,000 submitted Federal flood insurance claims.
- Not even a hurricane, but only a coastal storm, struck New Jersey and New York on March 30, 1984. Roughly $100 million was spent on New Jersey in clean-up and restoration alone.
- From August 28 to September 1, 1985, Hurricane Elena threatened Florida, prompting Pinellas County officials to evacuate all county residents. Even though the hurricane never made landfall in Florida, the cost was $200 million in damages.
- Hurricane Gloria hit mid-Atlantic and New England States on October 11–28, 1985. Almost $20 million worth of Federal flood insurance payments were made on claims from the storm, while over $70 million was spent on Federal Disaster Relief Assistance in the area.
- A coastal storm hit Maryland, Virginia and North Carolina in March 1989, with winds reaching only 47 mph. Yet the storm caused at least $4.6 million worth of property losses in Dare County, North Carolina; $800,000 in property damage in Sandbridge, Virginia; and the loss of much of the 2.5 million cubic yards of sand

that had been pumped onto the beach at Ocean City, Maryland, at a cost of $12 million.

- Hurricane Hugo struck South and North Carolina, Puerto Rico and the Virgin Islands in September 1989, causing $352 million in Federal flood insurance claims.
- In August 1991, Hurricane Bob hit New England. More than 2,500 Federal flood insurance claims were filed in four months, draining $40 million from the Flood Insurance Fund.
- The October/November 1991 nor'easter that struck New England and the mid-Atlantic was dubbed "ET"—the "Extra Terrestrial"—because of its monumental size and the damage it caused.
- The worst storm in 30 years slammed into the mid-Atlantic coast in January 1992, chewing up at least $12 million worth of the $45 million beach replenishment that Ocean City, Maryland, had just undergone.
- Claims from Hurricane Andrew, which struck in August 1992, are still being paid. As of June 11, 1993, roughly 5,000 Federal flood insurance claims had been paid in Florida and Louisiana for damages from Hurricane Andrew, totalling about $145 million in payments.
- As of June 1993, about 335 claims had been paid for damages in Hawaii from Hurricane Iniki, totalling $25.9 million, but another 24 percent of the claims remained unpaid.
- Claims from the December 1992 nor'easter already far outstrip payments made for Hurricanes Andrew and Iniki combined. As of June 1993, the following had been paid:
  - New Jersey: 11,773 claims paid, costing $148 million, with 15 percent of the claims outstanding;
  - New York: 6,143 claims paid, costing $77.2 million, with 15 percent of the claims outstanding;
  - Massachusetts: 1,273 claims paid, costing $12.9 million, with 19 percent of the claims outstanding;
  - Delaware: 41 claims paid, costing $349 thousand, with 39 percent of the claims outstanding; and,
  - Connecticut: 1,617 claims paid, costing $29.9 million, with 15 percent of the claims outstanding.
- As of June 1993, claims from the March 1993 blizzard, which swept the entire Atlantic coast, totalled 3,044, costing roughly $53 million in damages. But these claims are from the States of Florida and New York alone, and 68 percent of the claims in Florida, and 61 percent of the claims in New York, remained unpaid.

While storm after storm has slammed into the Nation's coasts, causing loss of life, enormous property damage, huge Federal Disaster Relief payments, and thousands of Federal flood insurance claims, FEMA has continued to make taxpayer-backed insurance available for damage in areas just hit, about to be hit or likely to be hit by storms. Congress recognized in 1968 that the coasts, and the people and structures on them, are immensely vulnerable and created the National Flood Insurance Program. But twenty-five years later, the NFIP still insures development that is a sitting duck for the next act of nature.

A TAXPAYER BAIL-OUT . . . AGAIN

According to an April 1992 statement by the Federal Insurance Agency, Congress appropriated $1.165 billion from the years 1981–1985 to "virtually re-establish" the National Flood Insurance Fund. Today, the Fund faces bills from the most recent round of storms ill-equipped to meet its obligations.

FEMA has stated that it doesn't plan to exceed its $1 billion borrowing authority to pay the claims from the most recent storms, but this ignores the obvious: the National Flood Insurance Program was created, in part, to encourage communities to guide development away from the water's edge so that Federal monies and human lives would be saved. That has not happened.

The Program was also created to be self-sustaining. It was not in the early 1980s, and if FEMA has to again borrow from the Treasury to pay the bills, it will not be in the early 1990s. Running-up an enormous line of credit courtesy of the Federal taxpayer is completely contrary to the purposes and objectives of the National Flood Insurance Program. It is also grossly unfair to require taxpayers who do not enjoy a house with an ocean or river view to subsidize its initial construction and post-storm reconstruction.

AMERICA'S COASTS: A THREATENED RESOURCE

The explosion of coastal development threatens not only human lives and the Federal Treasury, it threatens the coasts themselves. The Natural Resources Defense Council (NRDC) reported that in 1991, U.S. ocean and bay beaches were closed or advisories issued against swimming on more than 2,000 occasions in the States that monitor beach water quality. The NRDC reported that high levels of bacteria—primarily from raw human sewage—are responsible for the overwhelming majority of these closures and advisories. It traced the major causes of high bacteria levels in beach water to inadequate and overloaded sewage treatment systems, Combined Sewer Overflows (CSOs), raw sewage overflows, polluted runoff, faulty septic systems and boating waste.

Shoreline development brings a heavy—and sometimes untenable—burden to the waters and beaches that line America. According to NOAA, estuarine areas are among the most densely populated and heavily used in the Nation: an estimated 45 percent of the U.S. population now lives within these areas. One of the results of this mammoth concentration of development is a degradation and destruction of the resources that drew people to the coast initially. Coastal water quality suffers from the outpouring of human wastes and runoff from city and suburban streets. Habitat is lost as construction gobbles-up beaches, dunes, islands and wetlands.

Economically important industries, other than real estate development, suffer from the paving-over of America's coasts. In 1990, the total commercial fish catch in U.S. domestic waters was 9.1 billion pounds, valued at more than $3.3 billion. Roughly 17 million marine recreational fishermen fished the Nation's waters by the mid-1980s, pumping $8.2 billion into the economy. Boating-related sales for the eight Great Lakes States topped $3 billion in 1988, and trip-related expenditures approximately doubled that figure.

But polluted waters and filled wetlands cannot support fish and shellfish, or the wildlife and economies that depend on them. On any given day, more than one-third of harvestable shellfish beds are closed because of pollution; in the Gulf of Mexico, roughly three-quarters of shellfish waters are restricted for harvest.

Commercial landings of fish and shellfish from the southeastern Atlantic and Gulf of Mexico have declined by 42 percent since 1982 because of, among other things, habitat loss and pollution.

It has been estimated that coastal wetlands may contribute $5 billion to the production of fish and shellfish in U.S. coastal waters. Yet roughly half of the Nation's coastal wetlands have already been lost, and another 55 acres disappear every day, primarily from different types of development.

Healthy coastal areas have been likened to underwater rainforests for the sheer abundance and diversity of life they support. But the health of America's coasts is on the decline. The coasts cannot tolerate the onslaught of development that has mushroomed along them: development made possible, in part, by the National Flood Insurance Program. For the national treasure that is America's coasts to survive, Congress must act to rein-in fiscally unwise and hazardous construction along the country's shores.

ENACT S. 1405 AND REFORM THE NATIONAL FLOOD INSURANCE PROGRAM

The Coast Alliance and the 85 groups on whose behalf it is testifying today strongly support S. 1405, and encourage Congress to move quickly to enact it into law.

S. 1405 would address major weaknesses in the NFIP.

S. 1405 would address major gaps and weaknesses in the National Flood Insurance Program. Among other provisions, S. 1405 would improve compliance with the Program, establish a flood and erosion mitigation grants program, protect the taxpayer from underwriting new development in eroding coastal areas, and would acknowledge the need to protect the natural and beneficial functions of floodplains. These measures, jointly and as a package, would help reduce unwise Federal expenditures, encourage less hazard-prone floodplain development and help conserve valuable natural resources along the Nation's rivers, lakes and coasts.

S. 1405 would enforce the NFIP's existing mandate, not create new ones.

S. 1405 would not create a new mandate for the National Flood Insurance Program. Rather, it would finally enforce the mandate the Program was given 25 years ago—to guide development out of the floodplain—that has been largely ignored to the detriment of the Treasury, public safety and the environment.

S. 1405 is consistent with current re-evaluation of floodplain development.

S. 1405 is consistent with the re-evaluation of floodplain development underway at several different Federal agencies in response to the Midwest floods. The Office of Management and Budget (OMB) and the White House Office on Environmental Policy (OEP) have directed the Army Corps of Engineers, FEMA, EPA, Small Business Administration, the Departments of Agriculture, Transportation, Interior, Housing and Urban Development, and other relevant agencies to pursue an overall goal of protecting environmental and natural resource values in their response to the flooding. For example, when considering applications for levee repair and restoration, OMB and OEP direct the Federal agencies to consider nonstructural alternatives that could reduce future potential flood damages, lower long-term cost to the Federal Government, and provide for natural resource protection. Important first steps toward meeting these three critical goals—reduce future flood damages, lower costs to the Federal Government and protect the environment—would be gained if S. 1405 were enacted.

S. 1405 would help Congress reach out to flooded Midwest towns and cities.

The new mitigation grants program created by S. 1405 would provide crucial planning and financial assistance to flooded and flood-prone communities along the Nation's rivers and coasts. From Davenport, Iowa, to Hatteras Island, North Carolina, flood- and storm-prone communities would have access to funding to help make themselves less vulnerable to future floods. This would provide real, immediate aid to current flood victims while helping to avoid future flood victims.

Nothing in S. 1405 constitutes a Constitutional "takings."

In order to protect the Federal taxpayer, public safety and ecological resources, S. 1405 would prohibit new Federal flood insurance for new development in areas of the coasts that will be under water from erosion within—at a minimum—30–60 years. S. 1405 does not prohibit development in these areas. It does not require communities to prohibit development in these areas. It does not "take" a person's property. What it does "take" is the Federal taxpayer out of the business of insuring development in these areas. Since there is nothing in the United States Constitution guaranteeing a citizen access to Federal Flood Insurance, there is no abridgment of the Constitution through S. 1405.

NEEDED CHANGES TO THE NFIP

The following changes must be made to the NFIP to make it meet its original life- and money-saving mandate. These changes are included in S. 1405.

1. Compliance With NFIP Insurance Purchase Requirements is Improved

A. We strongly support the provisions of S. 1405 that will substantially strengthen and improve compliance with the NFIP's notice and mandatory purchase requirements.

The improved compliance resulting from S. 1405 will, in turn, help reduce taxpayer costs for flood damages and disaster relief, while limiting significant current risk to national deposit insurance programs.

Key provisions of S. 1405 that will improve NFIP compliance include:

- Clarifying the applicability of the mandatory purchase requirement to all mortgages purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, in addition to those mortgages directly backed by the Federal Government;
- Requiring escrow deposits for flood insurance and directing lender placement of insurance, if the borrower fails to make the required insurance purchase;
- Assessing a fine ($350/policy/year) against lending institutions that fail to require flood insurance coverage of mortgaged buildings in the floodplain (maximum $100,000/year);
- Establishing a standard flood hazard determination form that includes essential data, such as the map and panel number, date, and property location, and requiring redetermination with any note change if it has not been done within the past five years;
- Requiring lenders to notify all borrowers of the flood insurance purchase requirements; and,
- Requiring Federal banking agencies to regularly review compliance by lenders with the NFIP requirements.

We strongly support the immediate adoption of these measures. These measures will increase individual participation in the NFIP, particularly in less risk-prone areas, which currently are disproportionately uninsured as compared to higher risk sites. This will generate more money for the NFIP Fund, which in turn can be used for proactive flood loss reduction initiatives, such as community and individual mitigation measures. In addition to reducing the costs of disaster relief, these provisions will also reduce casualty loss deductions for uninsured flood related losses on income tax forms.

2. The Community Rating System is Codified

We support the codification of the Community Rating System (CRS) as provided for in S. 1405. The CRS reduces premium rates for communities that undertake floodplain management measures in addition to those required for participation in the National Flood Insurance Program. *We strongly support the bill's provision that will give communities participating in the rating system "extra credit" points for measures that protect undeveloped floodplains.* The entirely voluntary CRS credit incentives will encourage communities to exceed minimum NFIP risk reduction standards, and at the same time, will improve the public's safety and enhance protection of the floodplain environment.

3. A Flood and Erosion Damage Mitigation Grants Program for States and Communities is Established

Currently, the NFIP fails to address adequately the mitigation of flood losses. Although the building standards required under the NFIP have helped reduce damage to structures, repetitive losses are not discouraged through premium increases nor are the owners of repetitive loss properties encouraged to take steps to reduce future flood losses. As a result, in the 1980s, *about 2 percent of all flood insurance policies accounted for approximately 33 percent of total loss payments made.*

The NFIP offers no encouragement to communities or individuals to manage erosion-prone areas, despite the increased risk of flood losses from erosion. The only exception is the Jones-Upton amendment, which recompenses policy holders who relocate or demolish buildings in imminent danger of collapse due to erosion. Federal flood insurance policies are available for new construction in eroding coastal areas without any regard for rates of erosion and at no extra cost relative to similar non-eroding areas. In many cases, this puts the NFIP in direct conflict with Federally-approved coastal zone management programs.

S. 1405 establishes a mitigation assistance program to encourage State and community action to reduce the risk of flood losses. A critical aspect of this program is that actions can be taken before devastating floods occur, rather than after damages have been sustained. In particular, the mitigation assistance program is expected to target repetitive claim areas that have contributed heavily to the draining of the Flood Insurance Fund.

Mitigation assistance is made available in the form of cost-shared grants for community or State planning efforts to reduce risk, and for technically feasible and cost-effective mitigation activities such as elevating, relocating, floodproofing, or demolishing flood-prone structures; purchase of lands for public uses that are compatible with good floodplain management; and technical assistance by States to communities to develop community mitigation activities.

S. 1405 makes available from the National Flood Insurance Fund $10 million in the first year, rising to $20 million in the third and subsequent years, for these purposes. It is important to keep in mind that while mitigation costs are borne by all policy holders, benefits also flow to all policy holders by reducing many of the highest risk situations that are drawing Fund resources.

S. 1405 also provides an option of additional coverage for policy holders to meet costs of elevation or relocation in the event that property is substantially damaged and must be brought up to new community building codes, or comply with new land use control requirements. This insurance will ease the burden on policy holders that otherwise has often prohibited responsible actions to move buildings out of flood hazard areas.

4. New NFIP Policies are Prohibited in Erosion Hazard Areas

The Flood Insurance Fund will not be fiscally sound nor will the original mandate of the Program be met as long as taxpayer-backed insurance is offered for development in the areas most subject to erosion, wind, waves, storms, hurricanes, tsunamis and seiches.

Under S. 1405, new Federal flood insurance would not be available for new construction in the 30-year erosion hazard area, or for an addition to an existing structure if the addition makes the structure not readily movable (i.e., larger than 5,000 square feet). For those properties outside the 30-year erosion hazard area and within the 60-year erosion hazard area, Federal flood insurance would not be available for any new nonresidential structure, a residential structure that is not readily movable, or an addition to an existing structure if the addition makes the structure not readily movable.

The erosion hazard area would be calculated by determining the average annual rate of erosion in coastal areas, and multiplying it by a given number of years. This information is already readily available in several coastal States. According to the National Research Council's 1990 report, *Managing Coastal Erosion*—which was commissioned by the Federal Insurance Administration—about one-third of the coastal States have active erosion hazard area management programs that include the establishment of erosion setbacks for new construction. The FIA-commissioned report recommended the establishment of 30- and 60-year erosion hazard zones nationwide in which new Federal flood insurance for new construction should be prohibited. This recommendation is based on solid science and practical experience in States like North Carolina, which established 30- and 60-year erosion setbacks years ago.

Policies affecting the Great Lakes shores have been under scrutiny by the International Joint Commission (IJC), which recently came to conclusions very similar to those reached by the National Research Council and included in S. 1405. The IJC's Levels Reference Study Board recommended in March 1993 that the following measures be implemented around the Great Lakes and St. Lawrence River:

- Erosion setbacks that include minimum requirements for a 30-year erosion zone for movable structures and a 60- to 100-year erosion zone for permanent structures plus an adequate distance to assure a stable slope;
- Real estate disclosure requirements where the seller should be required to disclose to prospective buyers that the property is within a mapped or known flood or erosion hazard area;
- Changes to the National Flood Insurance Program to encourage community-based erosion management by establishing setbacks for new construction; and,
- Changes to the National Flood Insurance Program to provide mitigation assistance for structures imminently threatened by erosion with an emphasis on relocation of structures out of the hazard area.

Both the IJC and the National Research Council have concluded that rates and types of shoreline erosion are well-known; that programs addressing erosion hazards are already in effect on the State level; and that prudent policy dictates that Federally-insured development in erosion hazard areas is patently unwise.

Erosion hazard areas differ from coast to coast. For example, the highest rates of erosion along the Atlantic's 295 barrier islands from New England to Florida are in Virginia's 11 islands where the ocean shore is eroding an average of 10–25 feet per year. However, Maryland's island erosion rate is roughly 2–5 feet annually. North Carolina's Outer Banks average an annual loss of 2–5 feet in most areas, but as much as 15 feet a year in others.

It makes no sense for the Federal taxpayer to be involved in insuring construction in areas that are disappearing. An average annual rate of erosion of 10 feet would trigger, under S. 1405, the prohibition of new Federal flood insurance 300–600 feet from the first delineation point: that is, the first stable line of vegetation or a similar marker. Not only is this relatively discrete band of land eroding under normal circumstances, it suffers huge losses from erosion when storms, hurricanes and nor'easters slam into the coast.

Arguments have been made that instead of prohibiting Federal flood insurance in eroding coastal areas, insurance should be made "actuarial" in cost. There are two fatal flaws with this argument.

First, former FIA Administrator Hal Duryee testified before the House Banking Committee in 1990 that if Federal flood insurance were actuarial *for the risks posed by erosion,* the cost of a policy should be in the $11,000-a-year range. Currently, a Federal flood insurance policy in eroding coastal areas costs, at most, $1,200 a year. This is because Federal flood insurance does not calculate the risk posed by erosion when drawing up its Flood Insurance Rate Maps and determining the cost of a policy.

Therefore, an actuarial Federal flood insurance policy in erosion hazard zones should cost *ten times* what its maximum cost is today.

For Congress to impose actuarial rates in erosion hazard zones, policy holders would see a $10,000 jump in the cost of their policy. Historically, Congress has been extremely reluctant to impose even extremely modest increases in the cost of Federal flood insurance, denying 10 percent increases on policies that average only $350 a year. It would be politically remarkable for Congress to impose a $10,000 rate increase on flood insurance participants. It is therefore highly improbable that *true* actuarial rates—not those in the one or two or three thousand dollar range, but in the $11,000 range—would be imposed in coastal erosion hazard areas.

Second, it is not the purpose of the National Flood Insurance Program to make Federal insurance expensive in hazardous, storm- and flood-prone areas. It is the purpose of the Program to,

> "(1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize flood damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards . . ."

The Flood Insurance Program was created to save Federal tax dollars and *human lives* by entering into an agreement with flood-prone communities in which the government would exchange Federal flood insurance for development already in place with communities guiding new construction out of the floodplain. This would save disaster relief and other Federal expenditures, and lives, for the law further states that, "the Nation cannot afford the tragic losses of life caused annually by flood occurrences . . ." By continuing to offer Federal flood insurance in erosion hazard areas, the NFIP would continue to ignore its mandate to save lives and money by getting people and their structures out of the floodplain.

Even the most expensive Federal flood insurance policy fails abjectly to reflect the true cost to the Federal Government of floodplain development. The Department of Interior has estimated that every developed acre of coast consumes $50,000 in taxpayer-funded subsidies. Hurricane Andrew was a $20 billion storm because development prone to hurricanes was in place. The GAO determined that Federal flood insurance acts as a "financial safety net" for development. As long as this net is in place, development far beyond the capacity of the Flood Insurance Fund will continue to occur in areas that have an inescapable rendezvous with nature.

5. Natural and Beneficial Functions of Floodplains are Better Protected

FEMA has long known the valuable role that natural floodplains play in the reduction of flood damages, in addition to their environmental benefits. Yet, the NFIP has done little to explicitly promote their protection. S. 1405 directs FEMA to recognize and promote the natural and beneficial functions of the floodplain and specifies that communities in the Community Rating System can receive extra credit points for implementing measures that protect these functions.

We strongly support this provision. We further recommend that States or communities that wish to receive mitigation assistance be required to implement measures that provide for the protection of the natural and beneficial functions of floodplains. In addition, we strongly urge that an interagency task force be established to make recommendations to FEMA on the implementation of measures to improve protection of natural floodplain functions. Such a task force should include at least the following four Federal agencies: U.S. Fish and Wildlife Service, NOAA, EPA and the National Park Service.

RECOMMENDED ADDITIONS TO S. 1405

The Coast Alliance and the groups it represents today strongly support the rapid enactment of S. 1405. We believe that some strengthening refinements should be added to the bill, but not at the cost of quick affirmative action.

1. S. 1405 should more clearly state a preference against structural erosion control measures, such as seawalls and groins, as a response to coastal erosion.

According to Dr. Stephen Leatherman's *Barrier Island Handbook,* "Large amounts of money have been spent on coastal engineering structures, but many are ineffective and some have aggravated existing problems. The best solution is to employ more natural approaches, such as dune building and beach nourishment. These nonrigid techniques do not interfere greatly with natural processes."

A study done by Duke University researchers on the South Carolina beaches following Hurricane Hugo found that in some areas with structures, damage from the storm was actually worse than in areas without structures. On Folly Island, South Carolina, storm surge ebb (water returning to the sea from behind the island after the passage of the storm) was blocked by seawalls. The seawalls caused flooding and property damage by preventing the flow of water receding seaward.

S. 1405 should be clarified to assure that the NFIP policy is to discourage, and not to encourage, unwise and costly structural manipulation of coastlines and shoreline areas as a response to coastal erosion problems. We recommend that criteria be employed to evaluate any erosion control project that is proposed to affect FEMA's classification of erosion hazard areas. Evaluation criteria should at least include consideration of the type of activity proposed, degree of assurance of commitment to long-term maintenance, and assurances that the activity will not aggravate or affect erosion problems in adjacent or other coastal areas.

2. S. 1405 should require that sea level rise zones are delineated.

We strongly support S. 1405's inclusion of a new Congressional finding that acknowledges the greater risk to the National Flood Insurance Program posed by sea level rise and fluctuations in Great Lakes levels, and the need to adequately consider these factors in assessing overall risk under the Program.

However, S. 1405 should require that FEMA delineate sea level rise zones for areas likely to be affected in the next 100 years. Participating communities should be required to enforce building code restrictions that ensure the movability of new construction within this zone, as would be the case under S. 1405 for erosion hazard zones. The NFIP must begin now to address the problem of sea level rise. Although major changes in sea level may not be experienced in many places for another 50 years, the average life span of a building is 74 years, according to the National Association of Homebuilders. As a result, development occurring now will feel the impact of sea level rise.

Such a sea level rise provision could be modeled after the State of Maine's sand dune rules. To ensure the future mobility of a structure, Maine limits the size and height of new construction within its sand dune system to 35 feet in height and 2,500 square feet in area. Maine also prohibits the construction of larger buildings on any site within the sand dune system that cannot be proven to withstand a three foot sea level rise.

We further recommend that FEMA be explicitly required to review erosion rates in areas likely to be affected by sea level rise with each Flood Insurance Rate Map (FIRM) update.

3. S. 1405 should require a review of the implementation of Executive Order 11988.

We are concerned that a key oversight function from Executive Order 11988, the landmark Floodplain Management Executive Order, is no longer being carried out since the Federal Water Resources Council ceased activity in 1982. E.O. 11988 required periodic review of Federal agency compliance with many of the same requirements now placed on non-Federal floodplain development. We suggest that some form of review of the implementation among Federal agencies of this Order should be required as a part of this legislation.

Additionally, the NFIP is currently failing to meet its land management mandate by allowing and implicitly encouraging development in environmentally sensitive floodplains. We recommend that one of the explicit purposes of the NFIP should be to minimize damage to floodplains in order to protect their natural and beneficial functions as described in the "Unified National Program for Floodplain Management."

CONCLUSION

The National Flood Insurance Program is at a crossroads. Unless Congress acts *quickly* and in a thorough, comprehensive manner, the taxpayer will be left holding the bill for a Program whose weaknesses have been recognized for years and whose failures reflect a long-term unwillingness to meet the mandate that Congress gave it when it was created a quarter-century ago.

There is no longer any time or money for failure by the Program to meet its Congressional charge. The Federal Treasury is stretched to the limit and the National Flood Insurance Fund is on its knees. Precious tax dollars should not be diverted from the myriad of worthy Federal programs to bail-out structures that were built intentionally by the water's edge: a pretty area but one that is a sitting duck for deadly, costly and repetitive acts of nature. It is not the taxpayer's Constitutional or moral responsibility to subsidize a person's decision to construct a private residence or investment property in an extremely hazardous area.

There is no more time to wait before we protect the coastal environment from the onslaught of pollutants that comes with shoreside development. By the time the hearing is completed today, another dozen or more acres of coastal wetlands—nature's fish nurseries—will have been destroyed, primarily from development. By the end of today, another *13.7 billion* gallons of sewage wastes will have been discharged into coastal waters and the rivers that dump into them. The fish and shellfish, and the wildlife and economies that depend on them, are being lost daily as shellfish beds, fishing areas and beaches are closed from development-related pollution.

There will not be sufficient time or money to save the millions of people who moved to the coasts during the development "boom" of the past forty years when the next Hurricane Andrew—or a bigger storm—hits the heavily populated Gulf of Mexico and Atlantic coasts. Adequate evacuation in the event of a major hurricane making landfall is not problematic: it is impossible. In the Florida Keys alone, State emergency officials estimate a minimum evacuation time of 30 hours, but hurricane officials can only determine the area where the storm will hit 16 hours before it slams into land. Federal subsidies, like the National Flood Insurance Program, that encourage waterfront development encourage people to engage in a game of residential Russian roulette.

Now is the time for Congress to save money, human lives and the aquatic environment by immediately enacting S. 1405.

For the past six years, the Coast Alliance and the 85 organizations it is representing here today have urged Congress to reform the dangerously imbalanced National

Flood Insurance Program. We ask the subcommittee to start the process by moving quickly to pass S. 1405.

Thank you for the opportunity to testify today.

TESTIMONY OF KATHLEEN M. McCAULEY

FOR THE

MARSHFIELD COASTAL ADVISORY COMMITTEE

Mr. Chairman and Members of the subcommittee, my name is Kathleen McCauley. I am testifying on behalf of the Marshfield Coastal Advisory Committee. Our testimony has been endorsed by coastal resident associations from Massachusetts to Florida. I am honored to be here.

I am an appointed member of the Marshfield Coastal Advisory Committee. We are responsible for the administration of National Flood Insurance Program's Community Rating System. Our selectmen appointed our committee because 61 percent of Marshfield's tax base is in the floodplain.[1]

We support efforts to improve the National Flood Insurance Program. We oppose S. 1405 because it establishes erosion zones that would devastate the economic base of communities all around the country.

Erosion zones will immediately cause the value of real estate along the Nations' oceans, lakes and rivers to plummet. The effect of plummeting real estate values will be the erosion of local tax bases which provide funding for schools, fire and police. Erosion zones will curtail new construction through denial of flood insurance. Existing homes will lose their value by being included in 30 and 60 year erosion zones. The message is: this home won't be here in thirty or sixty years. In most cases this message will be wrong.

Only *actual* erosion can be measured. Future erosion, or accretion, over 30 or 60 years can't be predicted when the weatherman can't predict next weeks' weather. Experts disagree on the feasibility of predicting erosion over ten years, never mind sixty years.

How do you measure *actual* erosion? Every Flood Insurance Rate Map references a fixed baseline reference feature. These reference features are medallions set in telephone poles, seawalls or foundations. They are used to measure distances and elevations. S. 1405 does not restrict the measuring of erosion to a fixed baseline reference feature. Erosion measured from a non-fixed baseline reference feature will have homeowners and businesses guessing: 'Where's the erosion line today? Are we in it or out of it?'

Proponents of S. 1405 estimate seventy percent of the Nation's shoreline is eroding.[2] If their method is defective, consider the magnitude of the mistake. Errors and injustice will haunt residents. Just consider the possible effect in Marshfield where 11 percent of tax revenues are generated within 1000 ft of the seawall.[3]

The cost of the mapping and measuring of erosion zones and mitigation grants to communities and States will increase the current costs of running the National Flood Insurance Program by fifty percent. We estimate claims paid by the National Flood Insurance Program to people living on what the U.S. Army Corps of Engineers calls the 'critically eroding coastline' accounted for under eight million dollars in losses over a fifteen year period.[4] That is about five hundred thousand dollars a year. This bill would authorize the Federal Insurance Administration to spend more than twenty-five million dollars over just five years for mapping and studies of erosion zones! Five million dollars a year! Obviously, this is not a cost beneficial way to spend policy holder premiums.

Erosion zones will not only hurt communities but also hurt the fund.

As NFIP policy holders we support efforts to assure the soundness of the fund. To that end we recommend the following changes to S. 1405:

1. All structures within the *entire* floodplain should be required to insure. At present only a portion of floodplain structures are required to have flood insurance.

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[1] Figures supplied by member of Marshfield's Board of Assessors, James Haddad, in letter submitted as part of our written testimony.

[2] *National Flood Insurance Reform Act of 1993, Senator John F. Kerry, Aug. 4, 1993. Answers to Commonly Asked Questions*, p. 72.

[3] Figures supplied by member of Marshfield's Board of Assessors, James Haddad, in letter submitted as part of our written testimony.

[4] *Estimate of Cost to NFIP for 'Critically Eroding Shoreline' from 1978 thru 1992.* Marshfield Coastal Advisory Committee. This paper is submitted as part of our written testimony.

One third of NFIP losses occur where flood insurance is not required.[5] Unfortunately we have seen an example of undue financial loss in the Great Flood of '93. Much of this loss might have been insured if mandatory coverage had extended to the entire floodplain. S. 1405 provides the opportunity to broaden the insurance base. If your property is in the floodplain, National Flood Insurance should be required.

2. The definition of a 'repetitive loss structure' should be expanded. A property could suffer losses totaling 100 percent of the value of the structure over five years and still not meet the definition of 'repetitive loss' in S. 1405. We have recommended an expanded definition in our written testimony.

However, a unique problem exists for coastal condominium complexes that become 'repetitive loss properties'. In most cases these buildings will not be able to be elevated to meet the FEMA regulations thereby losing their affordable flood insurance. The loss of affordable flood insurance for condominiums is of particular concern to our Nation's retirees.

We support Section 602 which provides for additional insurance for flood victims who must comply with expensive FEMA building regulations when rebuilding after a disaster. However, it is critical that with this new coverage insurance premiums remain affordable.

I am recently unemployed. My husband is employed but could be laid off at any time. My home, the only one I own, represents my financial security. The same is true for my parents, who live two doors away, and my sister in Florida. The well being of my entire family, as well as the economic strength of our communities, is dependent on the value of our homes. We are just like our friends and neighbors; not rich but middle class. I have owned my home, thru Hurricane Bob, the 1991 Halloween Storm and the Blizzard of 1992. I have not suffered a loss. I am one of the millions who pay into the fund, saving other taxpayers, the cost of my disaster assistance. Affordable flood insurance has provided essential financial security and protection from flood disasters for me, my family and neighbors.

In conclusion, I would ask you not to devalue our homes and destroy our local economies by passing S. 1405. It would be a shame for Congress to make changes to the National Flood Insurance Program that would result in harming the very ones it had sought to protect.

Finally, Congress can substantially improve the National Flood Insurance Program if the legislation was modified to:

- most importantly, eliminate erosion zones,
- expand the insurance base to include all structures in the floodplain,
- expand the repetitive loss definition,
- and assure that premiums remain affordable.

This concludes my testimony at this time. We may want to supplement the record later. Thank you for the opportunity to present concerns of coastal homeowners.

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[5] *Answers to Questions About the Flood Insurance Program.* FIA, March 2, 1992, p. 25. Reference 'moderate to minimal hazards'.

TOWN OF MARSHFIELD
870 MORAINE STREET
MARSHFIELD, MASSACHUSETTS 02050

RESOLUTION FOR SENATE BILL 1405

WHEREAS, the Town of Marshfield, Massachusetts, is a coastal community in full compliance with the National Flood Insurance Program (NFIP).

WHEREAS, the town of Marshfield, Massachusetts, voluntarily joined the Community Rating System (CRS) of the NFIP in the year 1990, and the Town of Marshfield, Massachusetts, is a Class 9 CRS community, one of just four communities in the State of Massachusetts to achieve such status.

WHEREAS, the Town of Marshfield, Massachusetts, has enacted more stringent flood plain zoning by-laws than required by NFIP.

WHEREAS, bill S.1405, if passed by the Senate as written, would define 60 year erosion zones **AND WHEREAS** no fixed known benchmark is referenced (such as existing FIRM benchmarks) the delineation of these zones would be open to interpretation. The effect of this uncertainty could have an adverse effect on the taxbase of the Town of Marshfield, Massachusetts.

WHEREAS, bill S.1405, if passed by the Senate as written, would define 60 year erosion zones **AND WHEREAS** 11.4% of the Town of Marshfield's taxbase is within 1000' of the town's seawalls the existence of these zones and the denial of insurance for new development in these zones could have an adverse effect on the taxbase of the Town of Marshfield, Massachusetts.

WHEREAS, bill S.1405, if passed by the Senate as written, would require participating communities to notify lenders, real estate agents and homeowners of Flood Zone Changes. This requirement on an ongoing basis will constitute a financial burden and possible legal liability that will have an adverse effect on the Town of Marshfield, Massachusetts, and all its residents.

NOW BE IT RESOLVED, on this the 30th day of the year 1993, that the Town of Marshfield, Massachusetts, is opposed to. The Town of Marshfield, Massachusetts, is opposed to S.1405 as written.

The Board of Selectmen for the Town of Marshfield, Massachusetts, request a revision of S.1405 to reflect our concerns.

Board of Selectman
Town of Marshfield
Commonwealth of Massachusetts

William J. Francis William J Francis
Douglas W. Heald Douglas W Heald
Faith Jean Faith Jean

TOWN OF MARSHFIELD

870 MORAINE STREET
MARSHFIELD, MASSACHUSETTS 02050

8 September 1993

To: The Senate Subcommitee on
Housing and Urban Affairs

Re: The National Flood Insurance Reform Act of 1993

Honorable Sirs:

As an elected official of the coastal town of Marshfield, Massachusetts, I am deeply concerned about the impact this legislation, in its present form, will have on the tax base of this community.

I think it is important for you to know and understand some vital statistics about this community to be considered in your deliberations.

*Sixty-one percent (61%) of our real estate tax revenue comes from the flood plain.

*Eleven percent (11%) of this revenue is generated within 1000 feet of the seawall. The town has 4.5 miles of seawall protecting its coastline. These seawalls were constructed with federal money in 1931.

*Waterfront land is currently assessed as one million dollars ($1,000,000) per acre. An inland acre is assessed at $75,000.

The Town of Marshfield (population 22,876) is highly dependent on coastal tax revenue to maintain services and infrastructure, for we do not have a large industrial nor commercial base to help cushion our resources.

I am in agreement that we need to increase the membership of flood insurance policy holders in order to maintain an adequate fund. However, if the government denies homeowners the ability to purchase flood insurance, the land becomes valueless and the tax base decreases. Such denial, through the proposed bill, could come in the form of prohibitive rates or prohibitive regulations.

How is the town to maintain its present level of services from schools, police, fire, etc. if this legislation erodes our already economically-depressed tax base?

We consider ourselves an environmentally-concerned town, having spent millions of dollars on clean water, municipal sewerage etc. For more than one hundred years our coastal residents have lived in harmony with their enviornment, abiding by our stringent local by-laws.

As Chairman of the Board of Assessors I was elected to serve the people of this community by assessing property fairly and equitably. Beyond that I feel impelled to protect my community from proposed legislation that could have an adverse effect on our tax base.

I am speaking for Marshfield, but I am sure other coastal communities around the United States are in the same financial position.

I therefore ask you to vote to defeat this legislation as it is written today.

Very truly yours,

James Haddad

James Haddad
Chairman, Board of Assessors

Estimate of Cost to NFIP for 'Critically Eroding Shoreline' From 1978 Thru 1992

Senator John F. Kerry's office disseminated a report titled "Answers to Commonly Asked Questions" on S. 1405 dated Aug. 4, 1993. The report sited a 1971 U.S. Army Corps of Engineers report that classified *3.2 percent of the coasts of the Atlantic, Pacific, Gulf of Mexico and the Great Lakes as 'critically eroding'*. Later on the same report states . . . "inferences may be made 'that the V zone and the erosion zones would be one and the same'." Frank Reilly, recently retired Deputy Administrator of the NFIP, stated in a June 27, 1993, Boston Globe article that *$4.3 billion has been paid in claims for the entire program since 1978*. The Federal Insurance Administration stated in a June 22, 1993, information packet that the *V zone (Coastal High Hazard Area) accounted for just 5.7 percent of the nationwide claims since 1978.*

Our projections for the costs of erosion to the NFIP are based on the figures above.

Here is the math:

From 1978 thru 1992
5.7 percent of $4.3 billion = $245,100,000 Cost of V zones
3.2 percent of $245,100,000 = *$7,843,200* *Cost of 'Critically Eroding Shoreline'*

Our projection is based on the assumption that the entire 'critically eroding shoreline' designated in the 1971 U.S. Army Corps of Engineers *Report of the National Shoreline Study* eroded over the past twenty-two years.

Recommended Expanded Repetitive Loss Definition

We recommend expanding the definition of a 'repetitive loss structure' in S. 1405 by adding to the end of Sec. 102(a)(15) p. 12, line 2 . . .

We Will Supply Our Definition at a Later Date

It is important to note that classifying as a repetitive loss structure triggers the payment of mitigation monies from the NFIP fund. The definition of repetitive loss must strike a balance between mitigating for repetitive loss and weakening of the financial soundness of the fund by paying out too much mitigation money too fast. It is with this consideration in mind that we recommended that the expanded definition to include multiple smaller losses use the 100 percent criteria rather than the 50 percent criteria.

We would also note that our recommended definition does not address the potentially serious problem of large condominium complexes classifying as repetitive loss structures. Elevating condominium complexes to meet the FEMA guidelines for rebuilding after a loss will, in most cases, be structurally impossible. If the condominium complex falls out of compliance with FEMA guidelines, then cost of flood insurance for the owners would become unaffordable. The costs to the Nation's retirees, many of whom moved south and invested retirement funds in condominiums, would be devastating.

TESTIMONY OF ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

Introduction

The Association of State Floodplain Managers, Inc. is the only national organization of professionals responsible for managing flood-prone areas of the Nation. We represent agencies and individuals who implement State and local floodplain management programs which are guided by minimum standards established under the National Flood Insurance Program (NFIP). Members are also active in flood hazard mitigation and other State and local programs to reduce and prevent flood damage. Including its 12 State and regional chapters, the Association represents over 1,800 professionals, consisting of State and local planning, engineering and emergency management staff, elected officials, consultants, academics and scientists.

Congressional Interest in the National Flood Insurance Program

Significant Congressional and public attention has been focused on the National Flood Insurance Program and ways to strengthen, improve, and broaden it. Three major issue areas have been explored in detail:

(1) new and strengthened flood mitigation initiatives are needed, including mitigation insurance;
(2) additional efforts are needed to minimize future risks and losses due to flood-related events; and
(3) the Nation is underinsured against flood damage.

The Association congratulates Senator John Kerry on his active leadership in working with a large and diverse group of interests. Other members of Congress have contributed significantly to the legislation. The result is a well-developed legislative proposal that addresses the three major issue areas in order to strengthen, reform, and improve the NFIP, and to reduce flood hazard vulnerability of the citizens of the Nation.

The over-riding objective of the Association's recommendations to Congress has been to reduce the private and public economic impacts of flooding, while strengthening the National Flood Insurance Fund. It is also recognized that programs to accomplish these goals will go far towards ending the human suffering that flood disasters leave in their wake. We look forward to being an active partner in the development of initiatives. Our partnership with the Federal Insurance Administration will continue during the implementation of proposals to be formulated through this process.

SUMMARY OF SUPPORT FOR S. 1405

The Association of State Floodplain Managers Enthusiastically Supports S. 1405, the National Flood Insurance Reform Act of 1993

This legislation represents a progressive and aggressive approach to flood mitigation, loss reduction, and lender compliance. Enactment will move the Federal Government out of the traditional insurance program mode of "repair and restore" which results in continued exposure of buildings and citizens to floods, and continued exposure of Federal, State and local treasuries to flood-related expenses.

SUMMARY OF HOW S. 1405 ADDRESSES MAJOR ISSUE AREAS

Flood Mitigation Initiatives

Title IV of S. 1405 creates a well-designed mitigation assistance program for working with States and communities. The emphasis is clearly on community projects. Cost-shared grants for mitigation planning will encourage a comprehensive planning process to identify flooding problems and a range of effective alternatives. Implementation of mitigation projects will be stimulated by the availability of cost-shared grants.

Section 602 of S. 1405 creates a component within the flood insurance policy coverage to address mitigation. Inclusion in policy coverage of the cost of rebuilding flood damaged buildings in compliance with land use and control measures imposed by States and communities will lead directly to the reduction of risk from future floods. A consequent reduction in the probability of future claims against the National Flood Insurance Fund will follow. This measure would have been of great assistance to property owners along the Mississippi who suffered total loss or substantial damage since additional insurance payments would have paid for the cost of properly elevating or floodproofing reconstructed and restored buildings. Many of the people recently flooded were also flooded in 1973. Mitigation insurance is win-win: not only are owners helped to protect their property, but the cycle of paying disaster assistance (and insurance claims) over and over can be halted.

Recommendation: The Association of State Floodplain Managers agrees with targeting severely and repetitively flooded structures for implementation of mitigation efforts. However, as currently constrained, mitigation insurance may not be fully effective in dealing with some repetitive loss properties, those buildings that account for an inordinate number of claims. Some repetitively flooded buildings file numerous claims, each for relatively small dollar values, but cumulatively totalling large amounts of claim payments. The NFIP should be directed to establish criteria for determining which buildings present cost-effective mitigation opportunities. While those criteria clearly would include substantial damages and the newly defined repetitive losses, they must also allow flexibility in dealing with other properties where mitigation is determined to be cost effective.

Risk and Loss Reduction Initiatives

Title III of S. 1405 authorizes the Community Rating System, a program of incentives that leads to reduced cost flood insurance in communities that undertake progressive floodplain management activities. Authorization is important so these communities can be confident that their efforts will continue to be acknowledged.

Section 604 of S. 1405 will assure communities that their mapping needs will be evaluated on a 5-year cycle. While restudies and remapping will be dependent upon the budget, the documented need for such efforts will help assure proper consideration for sufficient funds to accomplish this important activity.

Title IV of S. 1405 contains provisions to create an erosion hazard component within the NFIP. Erosion rates will be determined through evaluation of historical records and State and local data. The rates will be used to establish areas that are reasonably predicted to be subject to erosion over 30- and 60-year periods.

Section 406 of S. 1405 prohibits the issuance of flood insurance on certain new construction within erosion hazard areas. The NFIP is founded on the premise that flood insurance is available to citizens in communities that elect to recognize identified hazards by adoption of building codes and land management standards.

Lender Compliance Initiatives

Title II of S. 1405 addresses a number of provisions designed to enhance compliance by regulated lenders and Federal agencies that function in that capacity. Of primary importance are provisions that require escrow of flood insurance premiums by lenders already collecting fees in escrow, and the creation and requirement to use a standard hazard determination form. Improved lender compliance will broaden the policy base and assure that more flood-prone citizens are financially protected for the next flood.

BACKGROUND—NATIONAL FLOOD INSURANCE PROGRAM

The NFIP is based on simple *quid pro quo* principles. The Federal Government identifies hazard-prone areas, offers flood insurance for structures located in those areas, and provides financial assistance after flood disasters. In return, local jurisdictions agree to adopt and enforce floodplain management and building code standards that are consistent with minimum performance standards established by the NFIP. The reason for this balance is important: because flood hazard areas can be reasonably defined, it is reasonable to expect local land management and use decisions to incorporate such information in order to protect public and private property and human safety.

Floodplain management, and the balancing component of flood insurance, is part of the Nation's total disaster management strategy. Flood insurance is not simply a business program of premiums versus claims. A simple look at the NFIP's "books" does not reveal the full benefits of the program. In the 25 years of the program, hundreds of thousands of land management and construction decisions have taken into account flood hazards. This means that hundreds of thousands of buildings are either situated in flood-free locations, or are constructed to minimize future damage. The Federal Insurance Administration has clear and convincing evidence of the effectiveness of the building standards.

Mitigation—Demonstration of Need and Benefits

The Federal Insurance Administration periodically summarizes data on flood insurance claims paid on both repetitively flooded and severely damaged buildings. According to a compilation of claims data since 1978, 63,000 NFIP insured buildings have received 2 or more claims. These repetitive losses accounted for $1.9 billion paid out of the National Flood Insurance Fund. For the period 1980–1990, about 18,000 buildings were damaged more than half their replacement value, accounting for claims of over $438 million.

Flood insurance claims data provide some insight into the potential cost-effectiveness of mitigation measures. In nearly every State, there are several structures that have received multiple flood insurance claim payments totalling more than $100,000. Clearly, investing now to implement mitigation projects will avoid such large cumulative payouts in the future. This will allow the National Flood Insurance Fund to build up reserves in order to be prepared for the inevitable major hurricane striking densely populated areas, the next catastrophic flood along the Mississippi or other major flood-prone areas of the country.

A mitigation program, including an insurance mechanism, designed to help prevent flood damage on buildings subject to repetitive and/or severe flooding, even if only half of them have feasible and cost effective opportunities, has tremendous cost savings potential and will help stabilize and protect the National Flood Insurance Fund. It is critical to realize that the financial benefits of mitigation are long-term benefits. These benefits will not be obvious until the next flood, whether a frequently occurring minor event or a rare, major flood. The social and economic benefits of reducing exposure of private property to flood damage are also apparent, since more homeowners and business owners will be able to maintain more viable properties that do not diminish in value after every flood.

A mitigation program offers another long term benefit to all flood-prone property owners. Through implementation of projects targeted on repetitive and severely flooded buildings, fewer flood insurance claims will be filed and paid. This will significantly reduce the pressure to raise the cost of flood insurance. For these reasons, the Association supports the creation of mitigation mechanisms within the NFIP. We support reducing the costs of flood disasters, rather than continuing to pay citizens and businesses to just patch up our communities and wait for disaster to strike again.

The Future of the NFIP and Floodplain Management—Mitigation

Mitigation is part of the Nation's total emergency management strategy. Mitigation is a systems approach to the identification of present risk exposure, and the avoidance and minimization of future hazards. To date, the NFIP has worked to accomplish identification (through floodplain mapping) and avoidance (through local land management efforts). The component that has received less attention is minimization, or addressing older flood-prone buildings that pre-date the adoption of building standards.

The Association of State Floodplain Managers has long maintained that new and expanded initiatives are needed to solve many of the Nation's recurrent and severe flood problems. Floods cause a full range of damage, from wet carpets to entire buildings swept off foundations.

Dams and levees contribute to the protection of many communities, but they are expensive to build, operate, and maintain. As clearly seen in the Midwest floods, if these flood control structures fail or floods greater than the design capacity occur, results are more devastating than the damages that would have been sustained in their absence. These measures also lend a false sense of security, encouraging additional development behind levees or below dams. The era of major structural works to keep the water away from people is past. The future direction will be to seek technically feasible and cost effective measures that can be implemented on a smaller scale.

Mitigation measures that have been proven feasible and effective include acquisition of severely flood-prone homes with dedication of the land to public open space, relocation of structures to flood-free areas, elevation of buildings in places where flood depths and velocities are not threats to safety, and a variety of floodproofing measures designed to prevent or reduce damage. While the cost of acquisition is the purchase price of the property, most mitigation measures can be implemented for much less.

The Role of the States in Floodplain Management

All States have designated State Coordinating Offices to provide technical assistance to local jurisdictions as they fulfill their responsibilities to the NFIP. Nearly half of the States have their own floodplain management laws and programs that complement or exceed NFIP minimum standards. States often provide engineering assistance with identification and mapping of floodplains, consideration of flood mitigation projects, and evaluation of post-flood situations. Many States work one-on-one with local permit reviewers when complicated permit applications are received. Under FIA's Community Assistance Program, most States perform evaluation visits to assure that local jurisdictions are fulfilling their responsibilities to the NFIP.

The Role of Local Jurisdictions in Floodplain Management

The *quid pro quo* of the NFIP places a significant responsibility at the local level. Land use decisions are made by counties, towns and cities. The NFIP simply requires that those decisions be based on performance standards designed to avoid and minimize future flood damage. Local jurisdictions often find it advantageous to zone flood hazard areas for open space or recreational, greenway, and park land development. Many use floodplains to help promote protection of wetlands and enhancement of aquatic and terrestrial habitats fringing waterways.

The Role of Lenders—The Nation is Still Underinsured

As of January 1993, the Federal Insurance Administration reported a total of nearly 2.6 million flood insurance policies. This represents an annual growth rate of 3.5 percent, a considerably lower rate than experienced in 1991. Just four years ago the policy count was 2.1 million, a number that had been virtually unchanged for the previous eight years. What small growth that has occurred can be attributed to at least three influences: significant floods during the last three years; marketing activities of FIA and insurance companies in the FIA's Write-Your-Own partnership program; and Congressional interest and investigation into the performance of mortgage lenders.

Growth in the policy base should and could have been significantly greater. Since 1973, Federally insured and regulated lenders must by law require flood insurance on mortgaged structures that are identified as within the floodplain. The requirements are imposed at loan origination, and are to be continued throughout the life of loans. Unfortunately, despite nearly two decades during which there were active periods of real estate purchasing and refinancing, the number of flood insurance policies did not increase. A few years ago, data indicated that nearly 400,000 new policies were written each year yet the total number remained constant. Clearly, many policy holders were finding it easy to drop policies, and the lenders were not checking for compliance with the policy retention requirements.

It is estimated that only about 15 percent of the Nation's 9–11 million flood-prone buildings are insured. The recent nominal growth in the policy base of the National Flood Insurance Program must be strengthened and continued. The Association considers the escrow of flood insurance premiums to be the single most important proposed measure contained in S. 1405 to accomplish this objective.

Flood Insurance Rate Maps—Management Tools

Flood Insurance Rate Maps (FIRMs) are prepared by the Federal Insurance Administration to delineate special flood hazard areas that are predicted to be subject to flooding by the 100-year flood event. The Association considers the FIRMs to be the foundation of local land use and management efforts. The maps also support the flood insurance side of the NFIP, as well as a number of environmental enhancement initiatives at State and local levels. The only way local officials can effectively manage floodplains is by having credible and accurate maps.

Many communities need map revisions and updates, especially in areas of rapid growth. Remapping must keep pace with technology and development in order for the NFIP to effectively continue to reduce flood damage. Computerization of the maps is an essential step, but it should not be seen as the solution to all mapping concerns. The Federal Government should protect its multi-million dollar investment in the floodplain map database.

Erosion Hazard Area Management and Mitigation

The Nation's coasts and Great Lakes shorelines adjust to the dynamic coastal environment. Some areas accrete through the deposition of sand while others lose ground to erosion. Some shorelines are sandy beaches, others are high bluffs or rocky in character. Along rivers, erosion is a much more complicated process that is not as well understood. Each erosion-prone type of shoreline or riverfront responds differently to natural and manmade influences. Erosion's impact on man is affected by whether buildings are constructed close to the water's edge, and whether the edge is eroding to the point of endangering that development.

Land management in general is predicated on wise use of land, not prohibition of all uses. In hazard-prone areas, wise use must recognize and account for the hazards. To do anything else ignores government's fundamental role in protecting public safety and welfare.

Flood hazard management is founded on the ability to delineate hazard areas, as well as the common sense to avoid those areas or to factor in the risks in the planning and construction of development that occurs within the floodplain. Establishment of Federal minimum standards for floodplain development, paired with local implementation of land use and building codes, is part of the foundation of the National Flood Insurance Program. This complementary system approach to recognizing and dealing with property damage and public safety risks has been accepted for over 20 years.

The current "Jones/Upton" provision of the NFIP provides certain property owners whose buildings are subject to "imminent collapse" with insurance claim payments to relocate to safe areas, or to demolish their homes. This program is *not* balanced. It does not require any recognition or management of erosion hazards by local jurisdictions. While one property owner may receive a flood insurance claim to demolish a home, the neighboring property may be approved for new construction right along the eroding shoreline.

The Association believes the balanced *quid pro quo* must be maintained if the National Flood Insurance Program is to address erosion hazards. The NFIP should determine historic erosion rates and establish erosion hazard areas as called for in S. 1405.

CONCLUSION

A progressive and aggressive approach to flood mitigation is needed to enhance the Nation's flood loss reduction strategy. We must move out of the traditional mode of "repair and restore" which results in continued exposure of buildings to floods, and continued Federal exposure to flood-related disaster expenditures. A mitigation grant program should be created within the National Flood Insurance Program, and mitigation insurance must be included in flood insurance policy coverage. Erosion hazard identification should be undertaken, and lender compliance provisions should be strengthened. These measures will lead to containment of the rising costs of flood damage, flood insurance claims, Federal disaster assistance, and innumerable costs at the State, local and private levels.

The National Flood Insurance Reform Act of 1993, S. 1405, addresses needed initiatives in a positive and constructive manner. The Association is very pleased with the legislation and is convinced its passage will greatly improve efforts to address the flood hazards in the Nation.

Successful flood damage reduction in the United States requires consistent and coordinated efforts from all levels of government as well as the private sector. The Association of State Floodplain Managers believes that the Federal Government has accomplished a great deal by pursuing these partnerships. But the job is far from complete. We pledge our support and technical expertise to efforts to improve the NFIP.

STATEMENT OF CHRISTOPHE A. G. TULOU

SECRETARY, DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

STATE OF DELAWARE

Mr. Chairman and Members of the subcommittee, my name is Christophe Tulou, and I greatly appreciate the opportunity to testify before you.

I am testifying today as the Secretary of the Delaware Department of Natural Resources and Environmental Control on behalf of the Coastal States Organization.

Since 1970, the Coastal States Organization has represented the governors of the 35 coastal States, Commonwealths and Territories in coastal and marine affairs, providing a collective voice for expressing their needs and recommending national policy to better manage coastal resources.

We in Delaware can speak with some credibility on the subject of flood insurance, and particularly on the issues of coastal development, erosion, and the need for a strong Federal mitigation effort. I will focus my comments on these issues as they are addressed by the legislation before you—S. 1405. Delaware, like all other States along the Atlantic and Gulf coasts, has long-term experience with erosion; it has been going on for thousands of years. For most of those years, the landward progression of the sea was no problem. Only in relatively recent times, when mankind decided to place buildings and other structures in the way of this onslaught, did the sea's intrusion create a problem.

Before the late 1800s, coastal dwellers were pretty savvy. They recognized the risks of coastal living, and either built on safe ground or built shacks in hazardous areas which could be replaced when the inevitable disaster struck. More recently, our desire to reach out and touch the sea has overwhelmed this sense of self-protection, and construction in many areas has proceeded without adequate respect for this erosion hazard.

We in Delaware, and the country at large, are now suffering from these decisions: since 1915, Delaware has spent millions to help devastated coastal communities recover from storms and the effects of on-going and relentless erosion. Nationwide, we have spent billions through a variety of disaster assistance and beach protection programs: Corps of Engineers projects; flood insurance subsidies; casualty loss insurance coverage; 2nd home mortgage deductions; infrastructure assistance—the list goes on and on. The upshot is that States and the Federal Government have said clearly that irresponsible coastal development is not only sanctioned, it is encouraged.

What have we gotten for this investment? We have millions of happy (for the moment) coastal inhabitants who are enjoying their close proximity to the water; we have a variety of industries who have done good business in high hazard areas; we have also nearly depleted our flood insurance fund, as many of us at this panel have long predicted; and we have placed the American taxpayer in peril of having to bail out the program when the next great disaster comes.

I would note that the issue is not just the coasts, as the long, mid-western summer has demonstrated. I would also point out that we, in coastal America, have been extremely lucky over the past 20 or so years. Storm frequencies have been low, but the National Hurricane Center predicts that the cycle is changing, and that we can expect a larger number of more powerful storms in the coming years. We are meeting that challenge with very little in the kitty. The National Flood Insurance Fund is not well despite the greatest piece of luck that has befallen the program since its inception in 1968—Hurricane Andrew's near miss of New Orleans last year and the surprisingly low level of flood damage in Florida.

I guess all this commentary is a long way of saying that we need this legislation. For those who would criticize it in its current form, I can only say: "We've come a long way, baby!"

Several years ago, I sat down with representatives of the lending community and their regulators to ask a simple question. Why was it that only 15 percent of structures in flood-prone areas carried flood insurance at a time when Federal law explicitly required its purchase before a loan could be obtained from a Federally insured or regulated lender? The question still stands, and the lender compliance provisions of the bill before you are at least a step in the right direction to get more flood-prone properties insured.

For too long, the National Flood Insurance Program has focused on the vertical dimensions of the flood threat. The response was to raise the structure out of harm's way. What the program has not realized is that elevation is not terribly satisfactory in an eroding area. The risk of land being slipped out from under structures must be recognized. For the moment, neither the NFIP's rates nor its programs adequately address the erosion hazard. As a result, owners of structures in high-hazard, water's-edge properties are benefitting from a sizable Federal subsidy, now paying on the order of $1,000 per year when the actuarial rate could be somewhere in the vicinity of $10,000 per year. I am not sure that proponents of actuarial rates in coastal high-hazard zones are thinking in $10,000-or-more-per-year terms when they advocate an actuarial approach to the erosion problem.

S. 1405 takes a much more advisable approach to the erosion-zone insurance issue: keep the Federal Government out. As one of my esteemed colleagues on this panel has said in the past, the Federal Government probably would not consider insuring properties on the lip of a volcano; why sanction it for structures that we know could very well be in the drink within 30, or even 60, years?

Of course, one could argue that not all shorelines are eroding. This is true. That is why we also need identification of erosion zones as mandated by this legislation. What about coastal communities that restore their beaches, as we try to do in Delaware? Obviously, our efforts to renourish beaches does temporarily halt the advancing seas, and may be economically justified in some instances. But, such activities cost a lot of money, and require a commitment that must continue until we—humanity—are no more. We could easily spend $2 million per year in Delaware for beach restoration activities. We don't get that much, and what we do get is coming harder every year. As you distinguished Members of the subcommittee well know, when it comes to appropriations, there is no such thing as a long-term commitment.

Perhaps more important than protecting the Federal Treasury and its contributors from a needless liability, the insurance prohibition in erosion zones sends an important message to those who would live at the water's edge. It is a risky enterprise. The goal of this entire exercise should be to inspire economically sound decisions whether to build in erosion-prone areas. This legislation will not in any way abridge a property owner's right to build where he or she wishes; it simply says that the Federal Government will not be an economic party to the decision, at least to the extent of insuring it. This places the burden for the risky decision where it belongs—with the property owner. Of course, Federal subsidies remain, including tax breaks for casualty losses and others I have already mentioned, but the prohibition is a step in the right direction.

There is precedent for such action in the form of the Coastal Barrier Resources Act (CBRA), which goes much further in its prohibition of Federal investments on so-called undeveloped barriers. Not only is flood insurance not available in these areas, but other Federal investment in infrastructure and other inducements to development are also barred. Interestingly, the impact of these prohibitions on property values—at least in Delaware—have been negligible according to realtors. Flood insurance is available, underwritten by Lloyd's of London at rates higher than NFIP rates. Some property owners in CBRA units have chosen to self-insure.

Mitigation is another crucial element in an effective flood insurance program. Problem prevention is becoming a very politically correct concept nationwide. Pollution prevention in the environmental control arena has gained widespread acceptance, for good reason. It's good for the environment, and it's good for business. The old adage, "You can pay me now, or you can pay me later" still holds. There is no reason why the NFIP cannot reflect that kind of forethought. Granted, paying insureds for protective actions before disaster strikes is not part of the traditional insurance mindset. That is what is wrong with the traditional insurance mindset. Mitigation deserves to be a major focus of FEMA in the future.

A very small percentage of structures are responsible for an amazingly large share of NFIP claims. This situation must be addressed, and I think the mitigation program proposed in S. 1405 is a great step in the right direction. Structures subject to repetitive damages or which are subject to excessive damage should be moved, flood-proofed or otherwise appropriately managed, to the extent that it is technically and economically feasible to do so. I am pleased to see that the benefits of Upton-

Jones—relocation or demolition of structures in imminent danger of collapse in erosion zones—are retained in this new mitigation program.

I also strongly support the incentives for voluntary actions under the Community Rating System (CRS) provisions of the bill. Through the combined CRS and mitigation initiatives proposed by this legislation, decisions about how best to avoid disaster are left where they belong—at the local level. The bill recognizes that many of our communities need financial and technical help to meet this challenge, and I applaud that effort.

In closing, I would like to reflect on the purpose underlying the NFIP: to prevent and reduce losses. The sponsors of the Act recognized that the benefits of the NFIP could extend far beyond the program's policyholder base. Unfortunately, fulfilling the NFIP's objective of loss reduction has become secondary to NFIP's function of providing insurance. The National Flood Insurance Reform Act of 1993—S. 1405—represents a much-needed change in course back to the original intent behind the Act.

On behalf of the Coastal States Organization and the State of Delaware, I strongly support the bill and urge its adoption by the Congress of the United States.

STATEMENT OF THE NATIONAL ASSOCIATION OF REALTORS®

INTRODUCTION

Thank you Mr. Chairman, for the opportunity to present my comments on behalf of the National Association of Realtors® (NAR) to the subcommittee this afternoon. My name is Pat Campbell-White. I am a Realtor® from Rehoboth Beach, Delaware, and the 1993 Vice-Chairman of the Realtors® Public Policy Committee. I am also a past-Chairman of the NAR Environment Committee.

It was almost two years ago this week that this subcommittee held hearings on a prior version of Senator Kerry's flood insurance legislation. A lot of give-and-take has gone on over the past few years among the parties interested in the reauthorization of the National Flood Insurance Program (NFIP). However, we feel that this process has resulted in a far better final product than the one we started off with in 1991. As a result, I am happy to be able to announce to you that the National Association of Realtors® is ready to support the passage of S. 1405, the "National Flood Insurance Reform Act of 1993."

We would especially like to thank Senator Kerry for his willingness to listen and to address our concerns. His door has always been open to us and we certainly appreciate his assistance in reaching this compromise.

As with every compromise, each side must yield on some points. For example, we are still concerned, that no one at the Federal Emergency Management Agency (FEMA) can provide a reliable estimate as to the number of properties and communities that may be impacted by S. 1405. In addition, NAR would have preferred that flood insurance rates be more actuarially-based. In fact, we still feel a case could be made that the erosion zoning would not be needed if insurance rates were raised to truly reflect the risk. Such risk-based premiums could achieve the desired result without having to resort to unnecessary zoning restrictions. However, given the fact that S. 1405 does not restrict the rights of property owners to develop their land, we feel that the approach taken by Sen. Kerry is equitable, fair, and one which merits our Association's support.

S. 1405

NAR has had three major concerns with the previous versions of Federal flood insurance legislation. Foremost among them were the "no build" aspects of the 10-, 30-, and 60-year erosion setbacks. S. 1405 addresses these concerns by denying Federal flood insurance coverage for newly constructed residential structures within the 30-year zone; while allowing property owners the right to build at their own risk or to obtain private insurance. In addition, between the 30- and 60-year lines, Federal insurance would not be available for newly constructed non-movable residential structures, new additions that make existing structures non-movable and newly constructed commercial structures within the 60-year zone.

There have been many misconceptions about our Association's position on flood insurance. NAR has never argued that property owners have a "constitutional right" to Federally-backed flood insurance. All we ever asked was that property owners either have the right to develop their property, or in cases where the right to build was denied by government action, that they be compensated for the loss of use of their property. S. 1405 simply denies Federal flood insurance for clearly defined classes of properties in the 30- and 60-year zones; it does not prevent new structures from being built. Nor does it place any restriction on property owners resorting to private insurance. This is a major change from the prior versions, and it is the main reason why our Association now feels that we can support S. 1405.

Our second major concern with the previous bills was that they allowed FEMA to designate entire communities as "erosion prone" without holding public hearings or giving affected property owners the right to public comment or an appeal of this decision. S. 1405 recognizes this shortcoming and it requires notice to affected property owners, public hearings in the affected local communities and an appeals process for property owners whose properties are designated as being within the mapped erosion areas.

Our third major concern was the Federal Government not usurp the traditional rights of local communities and States with regard to zoning. The National Association of Realtors® wholeheartedly feels that zoning is more effectively administered by individual States and localities and S. 1405 attempts to coordinate Federal and State activities to the greatest extent possible. States and localities often have historical and site specific data and S. 1405 requires that FEMA utilize existing State erosion data and to coordinate its erosion programs with State coastal management programs.

Finally, we are pleased that S. 1405 requires FEMA to remap erosion zones, at a minimum, once every five years, and to publish all revisions and changes every six months. Realtors® have a duty and responsibility to inform the public with respect to potential limitations on the use of their property. Regular, and accurate, notice should be provided to all landowners in high erosion and flood prone areas, both coastal and inland, as to the actuality and extent of erosion and flooding. This is especially true under S. 1405, since limits on insurance availability are predicated on the accurate delineation of the various erosion zones. S. 1405 allows communities to request remapping in special instances where new storms and weather patterns may have created new erosion areas or rendered old ones obsolete.

CONCLUSION

Mr. Chairman, again, thank you for the opportunity to present the views of the National Association of Realtors®. We are pleased that we could finally reach common ground with Senator Kerry on this important legislation and we, again, thank him for his efforts. I will be happy to respond to any questions you or the other committee members may have.

II

103D CONGRESS
1ST SESSION

S. 1405

To strengthen the National Flood Insurance Program and to reduce risk to the national flood insurance fund by increasing compliance, providing incentives for community floodplain management, providing for mitigation assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To strengthen the National Flood Insurance Program and to reduce risk to the national flood insurance fund by increasing compliance, providing incentives for community floodplain management, providing for mitigation assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Flood Insurance Reform Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Congressional findings.
Sec. 3. Declaration of purpose under the National Flood Insurance Act of 1968.

TITLE I—DEFINITIONS

Sec. 101. Flood Disaster Protection Act of 1973.
Sec. 102. National Flood Insurance Act of 1968.

TITLE II—COMPLIANCE AND INCREASED PARTICIPATION

Sec. 201. Expanded flood insurance purchase requirements.
Sec. 202. Escrow of flood insurance payments.
Sec. 203. Notice requirements.
Sec. 204. Placement of flood insurance by regulated lending institution or Federal agency lender.
Sec. 205. Standard flood hazard determination forms.
Sec. 206. Examinations regarding compliance by regulated lending institutions.
Sec. 207. Penalties and corrective actions for failure to require flood insurance, escrow, or notify.
Sec. 208. Financial Institutions Examination Council.
Sec. 209. Conforming amendment.

TITLE III—RATINGS AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT PROGRAMS

Sec. 301. Community rating system and incentives for community floodplain management.
Sec. 302. Funding.

TITLE IV—MITIGATION OF FLOOD AND EROSION RISKS

Sec. 401. Mitigation assistance in Federal Insurance Administration.
Sec. 402. Authorization of National Flood and Erosion Mitigation Funds under section 1362.
Sec. 403. State and community mitigation assistance program.
Sec. 404. Repeal of program for purchase of certain insured properties.
Sec. 405. Termination of erosion threatened structures program.
Sec. 406. Limitations on new flood insurance coverage in erosion hazard areas.
Sec. 407. Riverine erosion study.
Sec. 408. Coordination with coastal zone management programs.

TITLE V—FLOOD INSURANCE TASK FORCE

Sec. 501. Flood Insurance Interagency Task Force.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Maximum flood insurance coverage amounts.
Sec. 602. Additional coverage for compliance with land use and control measures.
Sec. 603. Flood insurance program arrangements with private insurance entities.
Sec. 604. Updating of flood insurance maps and identification of erosion hazard areas.
Sec. 605. Technical Mapping Advisory Council.
Sec. 606. Funding for increased administrative and operational responsibilities.

Sec. 607. Regulations.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) unprecedented growth in population and development has occurred along the coasts and rivers of the United States and a significant portion of the United States population is exposed to the hazards of flood, mudslide, and erosion damage;

(2) the number of properties insured against floods remained roughly constant during the 1980's, despite continuing growth in real estate activity in coastal, lakeshore, and riverine areas, and the level of flood insurance coverage that an individual can purchase has not been increased since 1977;

(3) due to substantial increases in construction costs, many property owners are prevented from purchasing flood insurance for the replacement value of the building, potentially resulting in an owner not receiving a payment to fully restore flood-damaged property;

(4) since 1989, there has been a significant increase in the incidence of major storms and hurricanes and severity of related damages in the United States;

(5) as a consequence of the increase in the incidence of storms, the national flood insurance fund

has been depleted, creating the risk of borrowing from the Treasury, and threatening to exacerbate the Federal budget deficit;

(6) no comprehensive Federal program exists to assist in the removal of structures from high risk areas, such as regulatory floodways and coastal high hazard areas, before disaster strikes;

(7) no comprehensive Federal program exists to evaluate and provide technical assistance and funds to communities for the mitigation of damages to repetitively and severely damaged structures or insured structures threatened by shoreline erosion, and such a program would reduce the vulnerability of the Federal Government to flood- and erosion-related losses;

(8) a Federal flood insurance program that combines predisaster mitigation efforts together with an insurance and compliance program will reduce the physical and economic effects of flood-related damage on the Federal Government, State and local governments, and individuals;

(9) requiring regulated lending institutions, government agencies, and government-sponsored enterprises to make sure that flood insurance coverage is purchased on all properties in areas of special

flood hazards in participating communities will increase compliance with the program, and increase the pool of funds, thereby decreasing the impact on the fund of individual flood events;

(10) the relative rise in sea level and the fluctuations in water levels of the Great Lakes expose the National Flood Insurance Program to greater risks, and such risks should be adequately considered in order to determine a comprehensive assessment of risk under the program;

(11) erosion hazard areas have not been identified or adequately considered for the purposes of insurance established under the National Flood Insurance Act of 1968;

(12) identification of erosion hazard areas and erosion management can improve public safety, guide appropriate development, and help reduce erosion losses to existing structures and protect new structures from erosion losses, thereby reducing Federal, State, local, and private expenditures due to erosion;

(13) a community-based approach to mitigation and erosion management, to reduce losses in floodplains and to minimize adverse impacts on natural and beneficial floodplain functions, is the most

comprehensive, effective, and cost-efficient method to reduce losses in floodplains and disaster assistance expenditures, and such benefits could be enhanced if combined with insurance protection for insured property owners to meet the increased reconstruction costs required by Federal, State, or local mitigation standards;

(14) incentives in the form of reduced premium rates for flood insurance under the National Flood Insurance Program should be provided in communities that have adopted and enforced exemplary or particularly effective measures for comprehensive floodplain and erosion hazard area management; and

(15) such community-based and individual mitigation and loss prevention methods and incentives should be incorporated into the National Flood Insurance Program.

SEC. 3. DECLARATION OF PURPOSE UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968.

Section 1302(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4001(e)) is amended—

(1) by redesignating paragraphs (3), (4), and (5), as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after the comma at the end of paragraph (2) "(3) encourage State and local governments and Federal agencies to protect natural and beneficial floodplain functions that reduce flood-related losses,".

TITLE I—DEFINITIONS

SEC. 101. FLOOD DISASTER PROTECTION ACT OF 1973.

(a) IN GENERAL.—Section 3(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)) is amended—

(1) by striking paragraph (5) and inserting the following new paragraph:

"(5) 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration Board, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision, approval, insuring, or regulation of the institution;";

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (6) the following new paragraphs:

"(7) 'regulated lending institution' means a bank, savings association, credit union, or similar institution subject to the supervision, approval, regulation, or insuring of a Federal entity for lending regulation; and

"(8) the term 'Federal agency lender' means the Federal Housing Administration, the Farm Credit Administration, the Farmers Home Administration, the Small Business Administration, and the Veterans' Administration, when such agency makes loans secured by improved real estate or a manufactured home.".

(b) CONFORMING AMENDMENTS.—

(1) REQUIREMENTS TO PURCHASE FLOOD INSURANCE.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended by striking "Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions" and inserting "Each Federal entity for lending regulation shall by regulation direct regulated lending institutions".

(2) EFFECT OF NONPARTICIPATION IN FLOOD INSURANCE PROGRAM.—Section 202(b) of the Flood

Disaster Protection Act of 1973 (42 U.S.C. 4106(b)) is amended by striking "Federal instrumentality described in such section shall by regulation require the institutions" and inserting "Federal entity for lending regulation (with respect to regulated lending institutions)".

SEC. 102. NATIONAL FLOOD INSURANCE ACT OF 1968.

(a) In General.—Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(7) the term 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration Board, and with respect to a particular regulated lending institution, means the entity primarily responsible for the supervision, approval, insuring, or regulation of the institution;

"(8) the term 'regulated lending institution' means a bank, savings and loan association, credit union, or similar institution subject to the supervision, approval, regulation, or insuring of a Federal entity for lending regulation;

"(9) the term 'Federal agency lender' means the Federal Housing Administration, the Farm Credit Administration, the Farmers Home Administration, the Small Business Administration, and the Veterans' Administration, when such agency makes loans secured by improved real estate or a manufactured home;

"(10) the term 'natural and beneficial floodplain functions' means—

"(A) the functions associated with the natural or relatively undisturbed floodplain that moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effects of waves and storm surge from storms; and

"(B) ancillary beneficial functions, including maintenance of water quality, recharge of ground water, and provision of fish and wildlife habitats;

"(11) the term 'erosion hazard area' means, based on erosion rate information and other historical data available, an area where erosion or avulsion is likely to result in damage to or loss of buildings and infrastructure within a 60-year period;

"(12) the term 'erosion control measures' means a community's efforts to control erosion through nonstructural and structural projects;

"(13) the term 'baseline reference feature' means an identifiable and prevalent physical or mapped feature of a shoreline from which erosion shall be measured;

"(14) the term 'readily movable structure' means a small permanent structure of less than 5,000 square feet that is designed, sited, and built to accomplish relocation at a reasonable cost relative to other structures of the same size and construction and that has access of sufficient width and acceptable grade to permit such relocation; and

"(15) the term 'repetitive loss structure' means an insured property that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each flood event.".

(b) CONFORMING AMENDMENT.—Section 1322(d) of the National Flood Insurance Act of 1968 (42 U.S.C. 4029(d)) is amended by striking "federally supervised, approved, regulated or insured financial institution" and inserting "regulated lending institution".

TITLE II—COMPLIANCE AND INCREASED PARTICIPATION

SEC. 201. EXPANDED FLOOD INSURANCE PURCHASE REQUIREMENTS.

(a) IN GENERAL.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) (as amended by section 101(b)) is further amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting before "shall by regulation" the following: "(after consultation and coordination with the Federal Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974)"; and

(3) by adding at the end the following new paragraphs:

"(2) The Director of the Office of Federal Housing Enterprise Oversight (after consultation and coordination with the Federal Financial Institutions Examination

Council) shall by regulation direct that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation implement procedures reasonably designed to assure that all loans that are—

"(A) secured by improved real estate or a manufactured home located in an area that has been identified at the time of the origination of the loan by the Director of the Federal Emergency Management Agency, as an area of special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

"(B) purchased by either such entity,

are covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

"(3) Each Federal agency lender shall implement procedures reasonably designed to assure that all property—

"(A) that secures loans that the Federal agency lender makes, increases, extends, renews, or purchases, and

"(B) that is improved by real estate or a manufactured home located in an area that has been identified at the time of the origination of the loan by the Director of the Federal Emergency Management Agency as an area of special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968,

is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).".

(b) EFFECTIVE DATE.—The provisions of this section shall apply to all transactions occurring after the expiration of the 1-year period beginning on the date of enactment of this Act.

SEC. 202. ESCROW OF FLOOD INSURANCE PAYMENTS.

(a) IN GENERAL.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended by adding at the end the following new subsection:

"(d)(1) Each Federal entity for lending regulation, after consultation and coordination with the Federal Financial Institutions Examination Council, shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for loans secured by residential real estate or manufactured homes, all charges for flood insurance under this title for the property shall be paid by the borrower to the institution. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums, fees, or other charges are due, the institution shall pay from the escrow account to the provider of the insurance the amount of insurance premiums, fees or other charges owed.

"(2) If a Federal agency lender requires the escrowing of taxes, insurance premiums, fees, or any other charges, then any charges for flood insurance under this title for the residential real estate or the manufactured home shall be paid by the borrower to the Federal agency lender. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums, fees, or other charges are due, the Federal agency lender shall pay from the escrow account to the provider of the insurance the amount of insurance premiums, fees or other charges owed.

"(3) Escrow accounts used to collect flood insurance premiums, fees, or other charges under this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.".

(b) APPLICABILITY.—Section 102(d) of the Flood Disaster Protection Act of 1973 (as added by subsection (a)) shall apply with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of this Act.

SEC. 203. NOTICE REQUIREMENTS.

Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a) is amended to read as follows:

"SEC. 1364. NOTICE REQUIREMENTS.

"(a) LENDING INSTITUTIONS.—Each Federal entity for lending regulation, after consultation and coordination with the Federal Financial Institutions Examination Council, shall by regulation require that before a regulated lending institution makes, increases, extends, or renews a loan secured by improved real estate or a manufactured home located in an area that has been identified by the Director as an area of special flood hazards, the institution shall notify the borrower of the special flood hazards and of the need to purchase and maintain flood insurance.

"(b) FEDERAL AGENCY LENDERS.—Before a Federal agency lender makes, increases, extends, or renews a loan secured by improved real estate or a manufactured home located in an area that has been identified by the Director as an area of special flood hazards, the Federal agency lender shall notify the borrower of the special flood hazards and of the need to purchase and maintain flood insurance.

"(c) PARTICIPATING COMMUNITIES.—The Director shall by regulation require each participating community, upon receiving the semiannual list prepared by the Director of all changes, revisions, and amendments made to the flood insurance rate maps during the preceding 6 months, to determine whether any properties in their community have been affected, and to provide annual notice by mail, notice by publication, or notice by other reasonable method, to regulated lending institutions that are known to lend in the community, and to the owners of all properties newly determined to be in special flood hazard areas, of the requirement that Federal flood insurance be purchased for insurable structures located within the special flood hazard areas in the community.

"(d) CONTENTS OF NOTICE.—Notification required by this section shall include a warning, in a form to be established by the Director, stating that the real estate or manufactured home securing the loan is located in an area of special flood hazards, a description of the flood insurance purchase requirements under section 102(b) of this title, a statement that flood insurance coverage may be purchased under the National Flood Insurance Program and may also be available from private insurers, and any other information that the Director considers necessary to carry out the purposes of the National Flood Insurance Program.".

SEC. 204. PLACEMENT OF FLOOD INSURANCE BY REGULATED LENDING INSTITUTION OR FEDERAL AGENCY LENDER.

(a) REQUIRED ACTIONS BY LENDER.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C.

4012a) (as amended by section 202(a)) is further amended by adding at the end the following new subsection:

"(e) REQUIRED ACTIONS BY LENDER.—

"(1) NOTIFICATION TO BORROWER OF LACK OF COVERAGE.—If, at any time during the term of a loan secured by improved real estate or by a manufactured home located in an area that has been identified by the Director as an area of special flood hazards and in which flood insurance is available under this title, a regulated lending institution or Federal agency lender determines that the building or manufactured home and any personal property securing the loan held or serviced by the regulated lending institution or Federal agency lender is not covered by flood insurance, in an amount not less than the amount required by subsection (b)(1), the regulated lending institution or Federal agency lender shall notify the borrower that the borrower should obtain, at the borrower's expense, an amount of flood insurance that is not less than the amount required by subsection (b)(1), for the term of the loan. If, not later than 60 days after receiving such notification, the borrower fails to purchase such flood insurance, the regulated lending institution or Federal agency lender shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the regulated lending institution or Federal agency lender in purchasing the insurance.

"(2) REVIEW.—

"(A) BY THE DIRECTOR.—A borrower may request that the Director review a determination that the improved real estate or manufactured home securing the loan is located in an area of special flood hazards. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide the borrower with a letter stating whether or not the property is in a special flood hazards area. The determination of the Director shall be final.

"(B) INSURANCE NOT REQUIRED.—If a person is provided by the borrower with a letter issued by the Director pursuant to subparagraph (A) during the preceding 1-year period, stating that the property is not in an area of special flood hazards, such person shall have no obligation under this title to require the purchase of flood insurance on the property.".

(b) APPLICABILITY.—Section 102(e) of the Flood Disaster Protection Act (as added by subsection (a)) shall apply to all loans outstanding on or after the date of enactment of the National Flood Insurance Reform Act of 1993.

SEC. 205. STANDARD FLOOD HAZARD DETERMINATION FORMS.

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by adding at the end the following new section:

"SEC. 1365. STANDARD FLOOD HAZARD DETERMINATION FORMS.

"(a) DEVELOPMENT.—The Director, in consultation with the Federal entities for lending regulation, shall develop a standard flood hazard determination form (hereafter in this section referred to as the 'determination form') for use in connection with loans secured by improved real estate or a manufactured home located in an area of special flood hazards and in which flood insurance is available under this title.

"(b) DESIGN AND CONTENTS.—The determination form shall state whether the property is in an area of special flood hazards, the risk premium rate classification established for the special flood hazard area in which the property is located, the complete map and panel numbers for the property, and the date of the map used for the determination. If the complete map and panel numbers for the property are not available because the property is not located in a community that is participating in the National Flood Insurance Program or because no map exists for the relevant area, the determination form shall so state.

"(c) REQUIRED USE.—Each Federal entity for lending regulation shall by regulation require the use of the determination form by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the determination form. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall require use of the determination form by any person from whom they purchase loans.

"(d) GUARANTEES REGARDING INFORMATION.—In recording information on a determination form, a person may rely on information provided by a third party to the extent that the third party guarantees the accuracy of the information.

"(e) RELIANCE ON PREVIOUS DETERMINATION.—A person or institution increasing, extending, renewing, purchasing, or servicing a loan may rely on a previous determination as to whether property is in a special flood or erosion hazard area, if the previous determination was made not later than 5 years after the date of the transaction, and the basis for the previous determination has been set forth on a determination form.".

SEC. 206. EXAMINATIONS REGARDING COMPLIANCE BY REGULATED LENDING INSTITUTIONS.

(a) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

"(h) FLOOD HAZARD INSURANCE COMPLIANCE BY INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

"(1) EXAMINATIONS.—The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the National Flood Insurance Program.

"(2) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1993, and biannually thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to Congress on compliance by insured depository institutions with the requirements of the National Flood Insurance Program. The report shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found to be in noncompliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.".

(b) AMENDMENT TO THE FEDERAL CREDIT UNION ACT.—Section 204 of the Federal Credit Union Act (12 U.S.C. 1784) is amended by adding at the end the following new subsection:

"(e) FLOOD HAZARD INSURANCE COMPLIANCE BY INSURED CREDIT UNIONS REQUIRED.—

"(1) EXAMINATION.—The Board shall, during each examination conducted under this section, determine whether the insured credit union is complying with the requirements of the National Flood Insurance Program.

"(2) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1993, and biannually thereafter for the next 4 years, the Board shall submit a report to Congress on compliance by insured credit unions with the requirements of the National Flood Insurance Program. The report shall include a description of the methods used to determine compliance, the number of insured credit unions examined during the reporting year, a listing and total number of insured credit unions found to be in noncompliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.".

SEC. 207. PENALTIES AND CORRECTIVE ACTIONS FOR FAILURE TO REQUIRE FLOOD INSURANCE, ESCROW, OR NOTIFY.

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) (as amended by sections 202(a) and 204(a)) is further amended by adding at the end the following new subsections:

"(f) CIVIL PENALTIES.—

"(1) IN GENERAL.—A regulated lending institution that is found to have a pattern or practice of violating this section shall be assessed a civil penalty by the appropriate Federal entity for lending regulation of not more than $350 for each such violation. A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

"(2) Total amount.—The total amount of penalties assessed under this subsection against a single regulated lending institution for any calendar year may not exceed $100,000.

"(3) Sales or transfers.—The subsequent sale or other transfer of a loan by a regulated lending institution that has committed a violation of this section shall not affect the liability of the transferring institution with respect to any penalty under this subsection. An institution shall not be liable for a violation relating to a loan committed by another institution that previously held the loan.

"(4) 3-year limit.—No penalty may be imposed under this subsection after the expiration of the 3-year period beginning on the date of the occurrence of the violation.

"(g) Additional Actions.—If a Federal entity for lending regulation determines—

"(1) that a regulated lending institution has demonstrated a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b) or subsection (d) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968, and

"(2) that the regulated lending institution has not demonstrated measurable improvement in compliance despite the issuance of penalties under subsection (f),

the agency may require the regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution is in satisfactory compliance with the requirements of the National Flood Insurance Program.".

SEC. 208. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

"(g) FLOOD INSURANCE.—The Council shall consult and assist the Federal entities for lending regulation, as such term is defined in section 1370(a)(7) of the National Flood Insurance Act of 1968, in developing and coordinating uniform standards and requirements for use by regulated lending institutions and Federal agency lenders under the National Flood Insurance Program.".

SEC. 209. CONFORMING AMENDMENT.

The section heading for section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended to read as follows:

"FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS".

TITLE III—RATINGS AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT PROGRAMS

SEC. 301. COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.

(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended—

(1) by inserting after "SEC. 1315." the following: "(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—"; and

(2) by adding at the end the following new subsection:

"(b) COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.—

"(1) AUTHORITY AND GOALS.—The Director shall carry out a community rating system program to evaluate the measures adopted by communities voluntarily participating in the community rating system, to provide incentives for measures to reduce the risk of flood or erosion damage that exceed the criteria set forth in section 1361, to encourage adoption of more effective measures for floodplain and erosion management, and to promote the reduction of Federal flood insurance losses.

"(2) INCENTIVES.—The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Director determines have adopted and enforced measures to reduce the risk of flood and erosion damage that exceed the criteria set forth in section 1361. In providing incentives under this paragraph, the Director may provide for credits to flood insurance premium rates in communities that the Director determines have implemented measures relating to—

"(A) the protection of natural and beneficial floodplain functions; and

"(B) the management of erosion hazards.

"(3) CREDITS.—The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood damage risks resulting from the measures adopted by the community under this program.".

(b) REPORTS.—Two years after the date of enactment of the National Flood Insurance Reform Act of 1993 and biannually thereafter, the Director shall submit a report to the Congress regarding the program under section 1315(a) of the National Flood Insurance Act of 1968. Each report shall include an analysis of the cost-effectiveness and other accomplishments and shortcomings of the program and any recommendations of the Director for legislation regarding the program.

SEC. 302. FUNDING.

Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(3) by adding after paragraph (5) the following new paragraph:

"(6) for carrying out the program under section 1315(b);".

TITLE IV—MITIGATION OF FLOOD AND EROSION RISKS

SEC. 401. MITIGATION ASSISTANCE IN FEDERAL INSURANCE ADMINISTRATION.

Section 1105(a) of the Housing and Urban Development Act of 1968 (42 U.S.C. 4129(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) The Director of the Federal Emergency Management Agency shall coordinate all mitigation activities, including the administration of the program for mitigation assistance under section 1367, under the Federal Insurance Administrator. These activities shall include the development and implementation of various mitigation activities and techniques, the provision of advice and assistance regarding mitigation to States, communities, and individuals, including planning assistance under section 1367(d), coordination with other Federal flood and erosion mitigation efforts, and coordination with State and local governments and public and private agencies and organizations for collection and dissemination of information regarding erosion.".

SEC. 402. AUTHORIZATION OF NATIONAL FLOOD AND EROSION MITIGATION FUNDS UNDER SECTION 1362.

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.), is amended by adding at the end the following new section:

"SEC. 1366. NATIONAL FLOOD AND EROSION MITIGATION PROGRAM.

"(a) EXPENDITURES.—For flood and erosion mitigation activities authorized under section 1367, the Director may expend from the National Flood Insurance Fund—

"(1) up to $10,000,000 in the fiscal year ending September 30, 1994;

"(2) up to $15,000,000 in the fiscal year ending September 30, 1995;

"(3) up to $20,000,000 in the fiscal year ending September 30, 1996;

"(4) up to $20,000,000 in each fiscal year thereafter; and

"(5) any amounts recaptured under section 1367(i).

"(b) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1993 and biannually thereafter, the Director shall submit a report to the Congress describing the status of flood and erosion mitigation activities carried out with funds authorized under this section.".

SEC. 403. STATE AND COMMUNITY MITIGATION ASSISTANCE PROGRAM.

(a) IN GENERAL.—Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by adding at the end the following new section:

"SEC. 1367. STATE AND COMMUNITY MITIGATION ASSISTANCE.

"(a) AUTHORITY.—The Director shall develop and implement a financial assistance program with amounts made available under section 1366 to States and communities for planning and activities designed to reduce the risk of flood and erosion damage to insured structures.

"(b) MITIGATION PLAN REQUIREMENT.—To be eligible to receive financial mitigation assistance, a State or community shall develop, and have approved by the Director, a flood and erosion risk mitigation plan (hereafter in this section referred to as a 'mitigation plan'), that is more protective against flood losses and if applicable, erosion losses, than the criteria established by the Director under section 1361. The mitigation plan shall include a comprehensive strategy for mitigation activities adopted by the State or community following a public hearing.

"(c) NOTIFICATION OF APPROVAL.—Not later than 120 days after the submission of a mitigation plan, the Director shall notify the State or community submitting the plan of the Director's approval or disapproval of the plan. If the Director does not approve a plan, the Director shall notify the State or community in writing of the reasons for such disapproval.

"(d) PLANNING ASSISTANCE.—

"(1) IN GENERAL.—The Director shall make planning assistance available to States and communities for developing mitigation plans.

"(2) FUNDING.—From any amounts made available for use under section 1366 of the National Flood Insurance Act of 1968 in any fiscal year, the Director may use not more than $1,500,000 to provide planning assistance grants to States or communities to develop mitigation plans under this subsection.

"(3) LIMITATIONS.—

"(A) TIMING.—A grant for planning assistance may be awarded to a State or community once every 5 years and each grant may cover a period of 1 to 3 years.

"(B) AMOUNT.—A grant for planning assistance may not exceed—

"(i) $150,000, to any State; or

"(ii) $50,000, to any community.

"(C) GEOGRAPHIC.—Not more than $300,000 may be awarded to any 1 State and all communities located in that State for planning assistance in each fiscal year.

"(e) ELIGIBLE MITIGATION ACTIVITIES.—The Director shall determine eligibility for assistance under this section for mitigation activities that shall be technically feasible and cost-effective. These activities may include—

"(1) elevation, relocation, demolition, or floodproofing of structures;

"(2) acquisition by States and communities of property substantially damaged by flood for public use as the Director determines is consistent with sound land management and use in such area; and

"(3) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities.

"(f) LIMITATIONS ON MITIGATION ASSISTANCE.—

"(1) AMOUNT.—The amount of mitigation assistance provided under subsection (e) may not exceed in any 5-year period—

"(A) $10,000,000, to any State; or

"(B) $3,300,000, to any community.

"(2) GEOGRAPHIC.—Not more than $20,000,000 may be awarded to any 1 State and all communities located in that State for mitigation assistance in any 5-year period.

"(g) MATCHING REQUIREMENT.—The Director may provide mitigation assistance to a State or community in an amount not to exceed 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from other funds to carry out mitigation planning under subsection (d) and eligible activities under subsection (e).

"(h) OVERSIGHT OF MITIGATION PLANS.—The Director shall conduct oversight of recipients of mitigation assistance to ensure that the mitigation assistance is used in compliance with approved plans.

"(i) RECAPTURE.—If the Director determines that a State or community that has received mitigation assistance has not carried out the mitigation activities as set forth in the mitigation plan, the Director shall recapture any unexpended amounts and deposit the amounts in the Fund.

"(j) DEFINITION OF COMMUNITY.—For purposes of this section, the term 'community' means a political subdivision that has zoning and building code jurisdiction over a particular area of special flood hazards, and that is participating in the National Flood Insurance Program.".

(b) REGULATIONS.—Not later than 6 months after date of enactment of this Act, the Director of the Federal Emergency Management Agency shall issue regulations implementing section 1367 of the National Flood Insurance Act of 1968, as added by subsection (a).

SEC. 404. REPEAL OF PROGRAM FOR PURCHASE OF CERTAIN INSURED PROPERTIES.

(a) REPEAL.—Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) is repealed.

(b) TRANSITION.—Notwithstanding the repeal under subsection (a), the Director of the Federal Emergency Management Agency may continue to purchase property under subsections (a) and (b) of section 1362 of the National Flood Insurance Act of 1968, as such section existed immediately before the date of enactment of this Act, for a period of 1 year beginning on the date of enactment of this Act.

SEC. 405. TERMINATION OF EROSION THREATENED STRUCTURES PROGRAM.

(a) IN GENERAL.—Section 1306 of the National Flood Insurance Act of 1968 (42 U.S.C. 4013) is amended by striking subsection (c).

(b) TRANSITION.—The Director of the Federal Emergency Management Agency (hereafter in this title referred to as the "Director") may pay amounts under flood insurance contracts for demolition or relocation of structures as provided in section 1306(c) of the National Flood Insurance Act of 1968 (as in effect immediately before the date of enactment of this Act) only during the 1-year period beginning on the date of enactment of this Act.

SEC. 406. LIMITATIONS ON NEW FLOOD INSURANCE COVERAGE IN EROSION HAZARD AREAS.

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended by inserting after section 1313 the following new section:

"SEC. 1314. PROPERTIES LOCATED WITHIN 30-YEAR AND 60-YEAR EROSION HAZARD AREAS.

"(a) PROPERTIES LOCATED WITHIN 30-YEAR EROSION HAZARD AREA.—After the establishment of erosion hazard areas under section 1360(i), the Director may not make flood insurance available within a 30-year erosion hazard area with respect to any new—

"(1) construction; or

"(2) addition to an existing structure, if the addition makes the structure not readily movable.

"(b) PROPERTIES LOCATED WITHIN 60-YEAR EROSION HAZARD AREA AND OUTSIDE 30-YEAR EROSION

HAZARD AREA.—After the establishment of erosion hazard areas under section 1360(i), the Director may not make flood insurance available with respect to any new—

"(1) nonresidential structure;

"(2) residential structure that is not readily movable; or

"(3) addition to an existing structure, if the addition makes the structure not readily movable;

that is constructed or relocated landward of the 30-year erosion hazard area and within the 60-year erosion hazard area established by the Director under such section.".

SEC. 407. RIVERINE EROSION STUDY.

(a) STUDY.—The Director shall conduct a study to determine the feasibility of identifying and establishing riverine erosion hazard areas, erosion rates, and baseline reference features, and the best methods of community management of such hazards consistent with section 1361 of the National Flood Insurance Act of 1968. In conducting the study, the Director shall—

(1) investigate and assess existing and state-of-the-art technical methodologies for assessing riverine erosion;

(2) examine and evaluate natural riverine processes, environmental conditions, human-induced changes to the banks of rivers and streams, exam-

ples of erosion and likely causes, and examples of erosion control; and

(3) analyze riverine erosion management strategies, the technical standards, methods, and data necessary to support such strategies, and methods of administering such strategies through the National Flood Insurance Program.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director shall submit a report to the Congress regarding the findings and conclusions of the study under this section. The report shall include any recommendations of the Director regarding appropriate methods and approaches for identifying and determining riverine erosion hazard areas and management strategies relating to riverine erosion.

SEC. 408. COORDINATION WITH COASTAL ZONE MANAGEMENT PROGRAMS.

(a) IN GENERAL.—In the implementation of this title and the amendments made pursuant to this title, the Director shall consult with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs to promote full coordination of the erosion management provisions of the National Flood Insurance Act of 1968 as amended by this Act, and the provisions of the Coastal Zone Management

Act of 1972. The Director shall, to the greatest extent possible, utilize State management programs approved under section 306 of the Coastal Zone Management Act of 1972 to facilitate development and implementation of regulations and guidelines for this title.

(b) COORDINATION REPORT.—The Director and the Under Secretary of Commerce for Oceans and Atmosphere shall jointly prepare a report that details the proposed mechanisms for achieving the coordination required in subsection (a). This report shall be transmitted to the Congress not later than 2 years after the date of enactment of this Act.

TITLE V—FLOOD INSURANCE TASK FORCE

SEC. 501. FLOOD INSURANCE INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—There is established an interagency task force to be known as the Flood Insurance Task Force (hereafter in this title referred to as the "Task Force").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall consist of 11 members, who shall be the designees of—

(A) the Director of the Federal Emergency Management Agency;

(B) the Federal Housing Commissioner;

(C) the Secretary of Veterans Affairs;

(D) the Administrator of the Farmers Home Administration;

(E) the Administrator of the Small Business Administration;

(F) each member of the Federal Financial Institutions Examination Council;

(G) the chairman of the Board of Directors of the Federal Home Loan Mortgage Corporation; and

(H) the chairman of the Board of Directors of the Federal National Mortgage Association.

(2) QUALIFICATIONS.—Members of the Task Force shall be designated for membership on the Task Force by reason of demonstrated knowledge and competence regarding the National Flood Insurance Program.

(c) DUTIES.—The Task Force shall—

(1) make recommendations to the head of each Federal agency and corporation referred to under subsection (b)(1) regarding the establishment or adoption of standardized enforcement procedures among such agencies and corporations responsible for enforcing compliance with the requirements

under the National Flood Insurance Program to ensure the fullest possible compliance with such requirements;

(2) study the extent to which Federal agencies and the secondary mortgage market can provide assistance in ensuring compliance with the requirements under the National Flood Insurance Program;

(3) study the extent to which existing programs of Federal agencies and corporations for compliance with the requirements under the National Flood Insurance Program can serve as a model for other Federal agencies responsible for enforcing compliance, and submit to the Congress a report describing the study and any conclusions;

(4) study the extent to which the flood insurance premium rate structure could be revised to minimize existing premium rate subsidies, to incorporate premium rate adjustments for erosion hazards, to account for catastrophic loss events, and propose strategies to establish an actuarial-based premium structure to account for all insurable risks identified under the National Flood Insurance Act of 1968, as amended by this Act; and

(5) develop guidelines regarding enforcement and compliance procedures, based on the studies and

findings of the Task Force and publishing the guidelines in a usable format.

(d) REPORTS.—Not later than 2 years after the date of enactment of this Act, the Task Force shall transmit to the Congress a report describing its studies and any conclusions.

(e) COMPENSATION.—Members of the Task Force shall receive no additional compensation by reason of their service on the Task Force.

(f) CHAIRPERSON.—The members of the Task Force shall elect 1 member to serve as the chairperson of the Task Force (hereafter in this section referred to as the "Chairperson").

(g) MEETINGS AND ACTION.—The Task Force shall meet at the call of the Chairperson or a majority of the members of the Task Force and may take action by a vote of the majority of the members. The Federal Insurance Administrator shall coordinate and call the initial meeting of the Task Force.

(h) OFFICERS.—The Chairperson may appoint officers to carry out the duties of the Task Force under subsection (c).

(i) STAFF OF FEDERAL AGENCIES.—Upon the request of the Chairperson, the head of any of the Federal agencies and corporations referred to in subsection (b)(1) may detail, on a nonreimbursable basis, any of the personnel of the agency to the Task Force to assist the Task Force in carrying out its duties under this Act.

(j) POWERS.—In carrying out this section, the Task Force may hold hearings, sit and act at times and places, take testimony, receive evidence and assistance, provide information, and conduct research as the Task Force considers appropriate.

(k) TERMINATION.—The Task Force shall terminate 2 years after the date on which all members of the Task Force have been designated under subsection (b)(1).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. MAXIMUM FLOOD INSURANCE COVERAGE AMOUNTS.

(a) IN GENERAL.—Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting "and" at the end of clause (i); and

(B) by striking clause (iii);

(2) by striking subparagraph (B) of paragraph (1) and inserting the following new subparagraph:

"(B) in the case of any nonresidential property, including churches—

"(i) $100,000 aggregate liability for each structure; and

"(ii) $100,000 aggregate liability for any contents related to each structure;";

(3) by striking subparagraph (C) of paragraph (1);

(4) in paragraph (2), by striking "so as to enable" and all that follows through the end of the paragraph and inserting "up to an amount, including the limits specified in clause (i) of paragraph (1)(A), of $250,000 multiplied by the number of dwelling units in the building;";

(5) in paragraph (3), by striking "so as to enable" and all that follows through the end of the paragraph and inserting "up to an amount of $90,000 for any single-family dwelling and $240,000 for any residential structure containing more than one dwelling unit;"; and

(6) by striking paragraph (4) and inserting the following new paragraph:

"(4) in the case of any nonresidential property, including churches, additional flood insurance in excess of the limits specified in clauses (i) and (ii) of paragraph (1)(B) shall be made available to every insured upon renewal and every applicant for insurance up to an amount of $2,400,000 for each structure and $2,400,000 for any contents related to each structure; and".

(b) REMOVAL OF CEILING ON COVERAGE REQUIRED.—Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (5), by striking "; and" at the end and inserting a period;

(2) by striking paragraph (6); and

(3) by adding at the end the following new flush sentence:

"Upon determining that a property is a repetitive loss structure, the Director shall charge the applicable risk premium rate for flood insurance based on consideration of the risk involved and accepted actuarial principles under section 1307(a)(1).".

(c) CONFORMING AMENDMENTS.—Section 1306(b)(5) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)(5)) is amended—

(1) by striking "(A), (B), or (C)" and inserting "(A) or (B)"; and

(2) by striking "(1)(C),".

SEC. 602. ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.

Section 1304(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(a)) is amended by inserting before the period ", including the cost of compliance with land use and control measures adopted by the State or community pursuant to section 1315, for properties that are repetitive loss structures or that have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event".

SEC. 603. FLOOD INSURANCE PROGRAM ARRANGEMENTS WITH PRIVATE INSURANCE ENTITIES.

Section 1345(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4081(b)) is amended by striking the period at the end and inserting the following: "and without regard to the provisions of the Federal Advisory Committee Act.".

SEC. 604. UPDATING OF FLOOD INSURANCE MAPS AND IDENTIFICATION OF EROSION HAZARD AREAS.

(a) 5-YEAR UPDATES.—Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) is amended by adding at the end the following new subsections:

"(e) ASSESSMENT OF NEED TO UPDATE AREAS.—(1) Once during each 5-year period (the 1st such period beginning on the date of enactment of the National Flood Insurance Reform Act of 1993), or more often as the Director determines necessary, the Director shall assess the need to revise and update the flood insurance rate map.

"(2) Upon the request of a State or community stating that a flood insurance rate map needs revision or updating and the State or community making the request agrees to provide not less than 50 percent of the cost, or the equivalent value of data, technical analysis, or other in-kind services, for the requested revision or update, the Director shall review and update the flood insurance rate map for the State or community.

"(f) AVAILABILITY.—To promote compliance with the requirements of this title, the Director shall make flood insurance rate maps and related information available free of charge to State agencies directly responsible for coordinating the National Flood Insurance Program and to appropriate representatives of communities participating in the National Flood Insurance Program, and at a reasonable cost to all other persons pursuant to section 1310.

"(g) NOTIFICATION.—The Director shall publish in the Federal Register or by other comparable method, not later than 30 days after the map change or revision under this section becomes effective, notices of changes to flood insurance map panels, and changes to flood insurance map panels issued in the form of Letters of Map Amendment and Letters of Map Revision. Such comparable methods shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as the Federal Register. Notices published in the Federal Register, or otherwise, shall also include information on how to obtain copies of the changes or revisions.

"(h) AVAILABILITY.—Every 6 months, the Director shall publish separately and make available in their entirety within a compendium, all changes and revisions to flood insurance map panels and all Letters of Map Amendment and Letters of Map Revision that were published in the Federal Register or distributed through other comparable methods during the preceding 6 months, free of charge, to States and communities participating in the National Flood Insurance Program pursuant to section 1310 and at cost to all other parties.".

(b) ASSESSMENT, IDENTIFICATION, AND MAPPING OF EROSION HAZARD AREAS.—Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) (as amended by subsection (a)) is further amended by adding at the end the following new subsection:

"(i) ASSESSMENT, IDENTIFICATION, AND MAPPING OF EROSION HAZARD AREAS.—

"(1) IN GENERAL.—Not later than 60 months after the date of enactment of the National Flood Insurance Reform Act of 1993, the Director shall, using erosion rate information and other historical data, assess, identify, and map all erosion hazard areas.

"(2) MAPPING PRIORITIES.—Not later than 2 years after the date of enactment of the National Flood Insurance Reform Act of 1993, the Director shall determine areas that are at greatest risk from erosion and assess, identify, and map the erosion hazard areas in these areas.

"(3) CONSIDERATION OF MITIGATION ACTIVITIES.—In identifying and mapping erosion hazard areas, the Director shall determine erosion rates based on the presence of any community erosion control measures and erosion of the area in the absence of the project. The Director shall use the lower estimated erosion rate in the determination of erosion hazard areas.

"(4) TRANSITION.—Until the Director has assessed, identified, and mapped erosion rate data for a community, the community may obtain, review, and reasonably use erosion rate information or other historical data available from other Federal, State, or other sources in order to develop a mitigation plan.

"(5) STATE EROSION RATE DATA AND BASELINE REFERENCE FEATURES AND STATE AND COMMUNITY LOSS REDUCTION PROGRAMS.—The Director shall, to the maximum extent practicable, use State or community erosion rate data and baseline reference features in designating erosion hazard areas under this title.

"(6) EROSION HAZARDS.—On each flood insurance rate map established under this section, the Director shall publish erosion rates for areas that are subject to erosion hazards. These erosion rates shall be used to identify areas that are subject to erosion hazards within a 60-year period (hereafter referred to as the '60-year erosion hazard area'), and for areas that are subject to erosion hazards within a 30-year period (hereafter referred to as the '30-year erosion hazard area') as measured from a baseline reference feature. On each flood insurance rate map, the Director shall identify and provide legible demarcation of the baseline reference feature. The Director may also provide for legible demarcation of erosion hazard areas where map scale or other limitations allow for such demarcation.

"(7) REVISION OF EROSION HAZARD AREAS.—In revising the demarcation of the baseline reference feature and erosion rate data, the legible demarcation of erosion hazard areas, or geographical boundaries of erosion hazard areas, the Director shall give special consideration to—

"(A) areas (or subdivisions thereof) that are experiencing or have recently experienced erosion rates in excess of the erosion rate established under this section, due to storms, high lake levels, or other extraordinary events creating a dynamic change in the local erosion rate; and

"(B) areas in which community erosion control measures have been implemented or erosion rates established under this section have been significantly altered otherwise by man-made or induced activity.

"(8) REVIEW.—The Director shall consult with State and community governments in the determination of erosion hazard areas, and shall provide for a public review and appeals process comparable to the established review and appeals process for flood elevation determinations required under this title.".

SEC. 605. TECHNICAL MAPPING ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is established a council to be known as the Technical Mapping Advisory Council (hereafter in this section referred to as the "Council").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of the Director of the Federal Emergency Management Agency (hereafter in this section referred to as the "Director"), or the Director's designee, and 12 additional members to be appointed by the Director or his designee, and shall include—

(A) the Under Secretary of Commerce for Oceans and Atmosphere (or his or her designee);

(B) a member of recognized surveying and mapping professional associations and organizations;

(C) a member of recognized professional engineering associations and organizations;

(D) a member of recognized professional associations or organizations representing flood hazard determination firms;

(E) a representative of the United States Geologic Survey;

(F) a representative of State geologic survey programs;

(G) a representative of State national flood insurance coordination offices;

(H) a representative of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; and

(I) a representative of a regulated lending institution.

(2) QUALIFICATIONS.—Members of the Council shall be appointed based on their demonstrated knowledge and competence regarding surveying, cartography, remote sensing, geographic information systems, or the technical aspects of preparing and using flood insurance rate maps.

(c) DUTIES.—The Council shall—

(1) make recommendations to the Director on how to improve in a cost-effective manner the accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps;

(2) recommend to the Director mapping standards and guidelines for flood insurance rate maps; and

(3) transmit an annual report to the Director describing—

(A) the activities of the Council;

(B) an evaluation of the status and performance of flood insurance rate maps and mapping activities to update and revise flood insurance rate maps as established by the amendments made under section 604; and

(C) a summary of recommendations made by the Council to the Director.

(d) CHAIRPERSON.—The members of the Council shall elect 1 member to serve as the chairperson of the Council (hereafter in this section referred to as the "Chairperson").

(e) COORDINATION.—To ensure that the Council's recommendations are consistent to the maximum extent practicable with national digital spatial data collection and management standards, the Chairperson shall consult with the Chairperson of the Federal Geographic Data Committee (established pursuant to OMB Circular A–16).

(f) COMPENSATION.—Members of the Council shall receive no additional compensation by reason of their service on the Council.

(g) MEETINGS AND ACTIONS.—

(1) IN GENERAL.—The Council shall meet not less than twice each year at the request of the Chairperson or a majority of its members and may

take action by a vote of the majority of the members.

(2) INITIAL MEETING.—The Director, or a person designated by the Director, shall request and coordinate the initial meeting of the Council.

(h) OFFICERS.—The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).

(i) STAFF OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—Upon the request of the Chairperson, the Director may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Council in carrying out its duties.

(j) POWERS.—In carrying out this section, the Council may hold hearings, receive evidence and assistance, provide information, and conduct research as it considers appropriate.

(k) TERMINATION.—The Council shall terminate 5 years after the date on which all members of the Council have been appointed under subsection (b)(1).

SEC. 606. FUNDING FOR INCREASED ADMINISTRATIVE AND OPERATIONAL RESPONSIBILITIES.

(a) AVAILABILITY OF FUND.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C.

4017(a)) (as amended by section 302) is further amended—

(1) in the matter preceding paragraph (1), by inserting "(except as otherwise provided)" after "without fiscal year limitation"; and

(2) by adding at the end the following new paragraphs:

"(7) for assessment and mapping of erosion hazard areas under section 1360(i), except that the fund shall be available for the purpose under this paragraph in an amount not to exceed an aggregate of $25,000,000 over the 5-year period beginning on the date of enactment of the National Flood Insurance Reform Act of 1993; and

"(8) for revising and updating flood insurance rate maps under section 1360(i), except that the fund shall be available for the purpose under this paragraph in an amount not to exceed $2,000,000, in each fiscal year beginning after the expiration of the 2-year period beginning on the date of enactment of the National Flood Insurance Reform Act of 1993.".

(b) CREDITS OF FUND.—Section 1310(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(b)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) by redesignating paragraph (6) as paragraph (7); and

(3) by inserting after paragraph (5) the following new paragraph:

"(6) any penalties collected under section 102(f) of the Flood Disaster Protection Act of 1973; and".

SEC. 607. REGULATIONS.

The Director of the Federal Emergency Management Agency, and any head of an appropriate Federal agency may each issue any regulations necessary to carry out the applicable provisions of this Act and the applicable amendments made by this Act.

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Federal Emergency Management Agency
Washington, D.C. 20472

NATIONAL FLOOD INSURANCE PROGRAM (NFIP)
REDUCING FUTURE FLOOD DAMAGES WITH FEDERAL FLOOD INSURANCE

HISTORICAL TAXPAYER SAVINGS 1975-91
DAMAGE REDUCTION RESULTING FROM NFIP MITIGATION REQUIREMENTS

Construction started prior to 1975 was not subject to the NFIP standards. Over an 18 year period since 1975, 2,070,000 new building have been constructed in Special Flood Hazard Areas. As a result of the NFIP, the risk in these areas has been identified and local communities have adopted and enforced NFIP building standards that drastically reduce a buildings vulnerability to flood damage.

This has resulted in an annual reduction in flood damage nationwide of $569 million, see table below.

PER $110,000 OF VALUE OF BUILDING & CONTENTS IN SFHA	BUILT PRIOR TO 1975 - NO NFIP MITIGATION REQUIREMENTS@	BUILT AFTER NFIP MITIGATION REQUIREMENTS BECAME EFFECTIVE
AVG. ACTUAL DAMAGE 1978 - 1991*	$349	$58
ANNUAL AVG. NUMBER OF NEW BUILDING PERMITS IN SFHA**		115,000+
NEW CONSTRUCTION IN SFHA 1975-1991 (115,000 X 17 yrs.)		1,955,000
ANNUAL DOLLAR REDUCTION IN DAMAGE RESULTING FROM NFIP MITIGATION REQUIREMENTS [($349-$58) x 1,955,000]		$569 MILLION

* Based on actual damages reported in connection with flood insurance claims for the period 1978-91 in 1992 dollars.

** Community reports to the FIA on building permits issued for new construction in the community's special flood hazard areas show that nationwide between 90,000 and 140,000 permits are issued annually, 115,000 has been selected as the average.

@ The Flood Disaster Protection Act of 1973 grandfather in all existing construction built prior to 1975, or the initial Flood Insurance Rate Map(PRE-FIRM), whichever was later. By 1975, most of the flood risks had been mapped and the NFIP building standards had been adopted by local governments.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR KERRY FROM

Dr. D. JAMES BAKER

Dear Senator Kerry:

Enclosed are the National Oceanic and Atmospheric Administration's responses to your questions concerning S. 1405, the National Flood Insurance Reform Act of 1993. The questions are a follow-up to my testimony before the Committee on Banking, Housing and Urban Affairs on September 15.

Please do not hesitate to call on me if you require additional information.

Question 1. EROSION MAPPING

a. How accurately can one predict erosion over a 30 year or 60 year period, as required by S. 1405? What is the scientific basis for erosion mapping?

ANSWER: According to the National Research Council's 1990 report, "Managing Coastal Erosion," the technical capability to predict and map erosion hazards accurately exists today. This report was sponsored by FEMA and strongly recommends that FEMA incorporate and identify erosion hazards as part of the National Flood Insurance Program.

In discussing the error estimates for the historical shoreline change analysis method of assessing and predicting erosion rates, the report states:

> A conservative (worst case) estimate of the maximum possible error in high-quality techniques of analyzing historical shoreline data approaches 40 feet, which is within National Map Accuracy Standards. In practice, errors often have been shown to be less than 20 feet, the average being 11 feet for the Delaware coastal erosion mapping project (emphasis added). (National Research Council report, "Managing Coastal Erosion", p. 125)

Accuracy, of course, depends on the type and quality of data available and the methodology used to predict shoreline change. The technique of using historic data generally gives results well suited to identifying or regulating erosion hazard areas. Erosion hazard area determinations made for regulatory purposes usually are updated regularly to ensure that predicted and actual rates are comparable.

The scientific basis for mapping erosion hazards rests on the principle that natural shoreline processes that contribute to shoreline erosion (e.g., long-shore transport currents, sediment sources and sinks, predominant wind patterns, local geomorphology and soils, bathymetry, etc.) are relatively constant over time. Therefore, analysis of short- and long-term shoreline change data can be used to establish long-term trends for shoreline movement. These trends can be used to predict shoreline positions and refined further into specific rates of erosion. These rates are then extrapolated to project shoreline position in the future.

The understanding of geologic processes associated with barrier island movement is such that it is possible to identify particularly unstable areas, such as those adjacent to inlets, where shoreline movements can be dramatic over a very short period of time. Even here, historical records may be used to assess the extent of shoreline fluctuation and so delineate areas where no construction should occur.

Fortunately, an excellent data base regarding shoreline change and erosion for the Atlantic, Pacific, Gulf of Mexico and the Great Lakes coasts presently exists at three federal agencies: the U.S. Army Corps of Engineers; the U.S. Geological Survey; and at the National Ocean Service (NOS) within NOAA. FEMA has also assembled a comprehensive collection of available coastal erosion rate data for use in administering the Upton/Jones amendment. Shoreline change information also is available from most coastal states, as well as from local governments, universities and private research institutions. Despite contrary assertions, the volume and quality of shoreline change data is significant--particularly at NOS, where accurate coastal survey data from as early as the 1840s are available. These data often are used by state regulatory agencies, university researchers, and others interested in using shoreline change information to analyze and predict shoreline erosion. The historic NOS shoreline position data, once digitized and compiled, yield highly accurate shoreline erosion maps compatible to the purposes outlined in S. 1405. In addition, FEMA has conducted research, in cooperation with state agencies and universities, on the question of accuracy, and they also conclude that reliable erosion hazard data can be determined. NOAA is willing to assist FEMA in the development of a coastal erosion mapping program using NOAA's significant shoreline positioning and mapping expertise.

b. How does one map erosion?

ANSWER: There are several techniques for assessing erosion accurately. Among the most cost effective is the use of historical shoreline positions from surveys, charts, and aerial photographs to establish long-term erosion trends and rates.

Briefly, a large volume of shoreline change data in the form of digital records (the basis of modern mapping techniques), high-quality maps and charts, aerial photogrammetry, and other sources of information are available for analysis. Shoreline position surveys and maps from the previous century archived at NOS can be digitized and rectified to provide reliable data that are compatible with data collected during the most recent shoreline mapping missions. Compiling and comparing historic shoreline position data builds a picture of shoreline change over time. Determinations of erosion trends typically are based on an appropriate period of record and also account for local disruptions caused by man-induced shoreline changes. Accurate analysis, of course, must account for differences and distortions among data, especially variability in techniques used to collect source data--all of which is readily accomplished through proven quantitative techniques and is a routine part of NOS' day-to-day mapping activities. Shoreline position data from the 19th century, for example, have a relative accuracy of between 5 and 8 meters, well within the accuracy needed to predict shoreline movement. Now, using advanced mapping techniques, NOS can position the shoreline within a few centimeters. For comparison purposes, the U.S. Geological Survey 1:24,000 scale maps often used in land use planning and Geographic Information Systems (GIS) have a relative accuracy of between 12 and 15 meters.

Fundamental to the establishment of long-term erosion trends is the identification of a fixed or "baseline" reference feature against which to measure shoreline movement over time. Such features may be natural, such as a rocky headland or outcropping, man-made, such as a road or lighthouse, or may be determined in relation to absolute geographic coordinates using Global Positioning System (GPS) technology. Reference features necessarily vary over different reaches of coastline due to the natural variability of coastal geography.

Once an erosion rate is determined through the analysis of shoreline change data and an appropriate reference feature selected, it is possible to estimate the projected landward movement of erosion over a chosen period of time. A linear distance is determined by multiplying the rate of erosion by time. Time usually is expressed as a period of years. In the National Research Council report, 10-, 30- and 60-year intervals were selected, but any period may be chosen.

c. What experience does NOAA have in mapping erosion hazard areas as part of the Coastal Zone Management program?

ANSWER: Mapping and surveying the coast is a core NOAA mission; however, NOAA does not now directly map erosion rates or shoreline change for flood insurance purposes. Its mission is to delineate the shoreline of the United States for boundary determinations and to provide accurate nautical and aeronautical charts for navigation purposes. NOS, for example, maintains a suite of 1,000 nautical charts encompassing the entire U.S. shoreline; and NOS research and development laboratories support map production by providing advanced data acquisition, compilation, and construction technologies.

As noted above, the historic shorelines NOS has compiled over time are the basis for many shoreline change analysis efforts. NOS and its predecessor agencies have conducted surveys of the Nation's coasts since the mid 1800s, and have assembled the longest continuous data base of shoreline positions available today. According to independent reviewers, historic NOS surveys and maps are "generally the most accurate maps available for the coastal zone . . . . [Their] high accuracy makes them quite useful in delineating the land-water boundary and particularly for determining net changes over the long term." (National Research Council report, "Managing Coastal Erosion", p. 123)

d. Have states undertaken similar activities? With what success?

ANSWER: Yes. Many coastal states including Delaware, Maine, Rhode Island, New York, New Jersey, Pennsylvania, Michigan, Wisconsin, Maryland, North Carolina, South Carolina, Florida, Alabama, and California have identified erosion areas and established management policies for these hazardous areas under their respective coastal management plans. State erosion management programs, while similar in many respects, do vary in the types of erosion rate data used, the choices of baseline reference features, and the establishment and location of erosion setbacks or other development regulations to meet various programmatic purposes.

QUESTION 2. BUILDING WITHIN EROSION ZONES

a. What is the impact on the coastal zone, if any, of building inside 30-year erosion zones, which may include barrier land forms such as beaches and islands?

ANSWER: In the findings and national objectives for the Coastal Zone Management Act (CZMA), Congress acknowledges what many coastal geologists, scientists, and planners have long understood: improperly planned, constructed, and sited development in sensitive coastal areas leads not only to the eventual destruction of that development from erosion, storms, flooding, and other natural events, but to the destruction of natural protective features--beaches, dunes, wetlands--that could reduce the effects of those events.

In the findings of fact, Congress summarized the deleterious effects of unplanned and inappropriate development in the coastal zone:

"The increasing and competing demands . . . of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development [and] recreation . . . have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion" (16 U.S.C. 1451(c)).

Erosion is a priority concern under the CZMA. Specifically, one of the policy directives of the CZMA at 16 U.S.C. 1452(2)(B) is "the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands." Approved state coastal zone management plans must include "a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion" (16 U.S.C. 1455 (d)(2)(I)).

b. Is the current flood insurance program inconsistent in any respect with policies adopted under the Coastal Zone Management Act?

ANSWER: A central tenet of the CZMA is that coastal development should be controlled so as to provide for ". . . the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat . . . [and to manage] coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas . . . . " (16 U.S.C. 1452(2)(A)-(B)) The flood insurance program as currently administered requires communities to adopt minimum FEMA standards that deal almost exclusively with reducing flood risks for individual structures. Communities are not required to assess anything other than a development project's potential for increasing flood-related hazards. Analyses of impacts, other than flood hazards as they affect structures, that adversely affect valuable coastal resources are discretionary.

The National Flood Insurance Program provides an incentive program, the Community Rating System, which S. 1405 would affirm if enacted. The Community Rating System provides incentives to communities that exceed the minimum Federal standards for development in floodplains. In coastal communities it provides incentives for the communities to plan community-wide development, well beyond individual structures, to achieve many of the priority concerns of the CZMA. NOAA is a member of the FEMA committee overseeing the Community Rating System. In our view, S. 1405 would result in significant progress toward ensuring that the NFIP and state coastal management programs operate more compatibly.

QUESTION 3. DENIAL OF INSURANCE VS. ACTUARIAL RATES ON NEW CONSTRUCTION IN EROSION ZONES

In your testimony, you stated that "development sited too close to water bodies and without regard for the dynamic coastal environment creates unacceptable public safety risks and often causes significant environmental damage, and, eventually, unacceptable costs to the Federal government for disaster response."

a. Does the current availability of federal flood insurance on properties sited too close to water bodies today provide an incentive for development that creates unacceptable public safety risks and environmental damage?

ANSWER: Congress created the National Flood Insurance Program in large part because private insurers refused to underwrite flood insurance policies in areas considered too risky to insure, and to reduce claims for federal disaster assistance. When a community joins the National Flood Insurance Program, it must adopt coastal construction standards which elevate structures out of harm's way. Without flood insurance, property owners would have to accept the high risks of their decisions to build or live in a hazardous coastal or riverine location, but would not necessarily have to build to appropriate construction standards.

In the recent past, areas vulnerable to hurricanes have been relatively undeveloped; vacation beach houses generally were inexpensive "beach shacks" or "cottages." Urban and suburban development was confined to a few areas, and often limited in its landward spread by wetlands. The coastal development boom of the 1970s and 1980s, however, replaced beach cottages with million-dollar dwellings, and suburban and urban development. Almost 50 percent of all Americans now live within a day's drive of coastal areas. Over the next two decades, coastal populations are projected to increase by 15 percent.

Hurricanes Hugo and Andrew have been the most costly storms in history partly because there is now more development in place to damage and destroy: coastal development has been concentrated on barrier islands and in floodplains. Such development rarely occurs in the context of natural geographic or geomorphic limits of areas vulnerable to coastal hazards. For example, infrastructure often is designed and subdivisions are approved without reference to the need to evacuate low-lying areas quickly in the event of a severe coastal storm.

Problems of unwise coastal development are exacerbated by destruction of and interference with natural protective features: beaches, dunes, tidal wetlands, mangroves and the like. Development sited in sensitive areas can cause direct destruction of these resources, but also stresses coastal ecosystems generally through pollution loadings, habitat fragmentation, and the importation of exotic species. In addition, engineered "hard" flood or erosion control structures designed to protect vulnerable development usually cause resource damage, whether it be by accelerating the loss of invaluable marshes, dune systems and recreational beaches; by destroying scenic and aesthetic qualities of the shore; or by producing costly unanticipated outcomes.

Certain areas of the coast simply are not suitable for habitation at all, while others are suitable only for temporary occupation in easily moved structures. Permanent structures should be located only in stable areas behind dune lines and should meet stringent coastal construction codes and other flood mitigation measures. The existing coastal construction standards required by the NFIP support these mitigation measures. Above all, natural features that buffer coastal hazards must be preserved to reduce losses from these hazards--and to protect the health of coastal ecosystems.

b. If federal flood insurance were not available on new construction in 30 or 60-year erosion areas, would this eliminate an incentive for development sited too close to water bodies?

ANSWER: Limiting federal flood insurance in 30- and 60-year erosion areas would curtail some incentive for development along high-hazard waterfronts and appropriately would ask those individuals wishing to develop in these areas to assume more of the risks of that development than with flood insurance. Such a restriction would be made more effective if Federal disaster assistance payments were similarly limited. Among the most important factors driving coastal development is the availability of financing, much of which is beyond current statutory requirements for purchasing flood insurance. S. 1405 seeks to remedy that situation by extending the requirements for flood insurance coverage. But past experience strongly suggests that such measures will curtail some, but not all, development in coastal high hazard and erosion areas. We look forward to working with FEMA through the Community Rating System and other mechanisms to further our agencies' mutual interests.

The federal flood insurance program, federal disaster assistance programs, federally funded public works projects, federal casualty loss deductions, federal "depreciation" deductions, and other federal laws together contribute to make building in coastal areas less risky than it would be otherwise. Congress has addressed policy regarding undeveloped coastal barriers. In this time of fiscal austerity, all Federal incentives and subsidies for development in coastal hazard areas, undeveloped and developed, should be reevaluated. Federal activities in the coastal zone should be consistent with the CZMA mandate to ensure that development along the coast occurs only where it will not harm coastal resources and where its exposure to coastal hazards, including erosion, is minimized to protect lives and property.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM

LARRY PALMER

Redland Insurance Company

November 1, 1993

The Honorable Donald W. Reigle, Jr., Michigan
Chairman Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D. C. 20510-6075

RE: National Flood Insurance Reform Act of 1993 (pending Senate Bill 1405)
Larry W. Palmer Senate Testimony September 14-15, 1993

Dear Senator Reigle:

In response to your letter dated October 5, 1993, please find the following answers to the two questions posed by Senator Connie Mack. Per your request, I have routed a copy of this letter to Ms. Lory Breneman, the Committee's Chief Clerk, in care of the above address. I will restate the Senator's questions per your directions:

QUESTIONS FOR LARRY PALMER
FROM SEN. CONNIE MACK
HEARINGS ON NATIONAL FLOOD INSURANCE REFORM ACT
SEPTEMBER 14, 1993

Question 1.

What is the likelihood that the private insurance industry will come in and insure people classified in these newly determined erosion zones?

Answer Question 1.

Very unlikely that the private insurance industry would bear risk directly and participate outside of the federally reinsured National Flood Insurance Program, Write-Your-Own (WYO) initiative. I have consulted with my colleagues on the National Committee on Property Insurance - Flood Insurance Committee and the consensus is a unanimous no amongt the ten WYO member companies present at the October meeting that collectively write over eighty percent of the WYO flood policies estimated to be in excess of 2.3 million. My personal views on behalf of my own company, Redland Insurance Company, are no different. Generally, the erosion-prone properties would be considered adverse selection with an extremely high probability of a loss within a period definite and certain. To quote from an industry accepted textbook, "Principles of Risk Management and Insurance" Second Edition 1981:

> *"The major problem is that the premium on properties in flood-prone areas would be much greater than prospective insureds would be willing to pay."*

This is assuming, of course, that the private sector property and casualty industry would bear risk and provide coverage at actuarially sound rates for these, so designated, erosion-prone properties.

Question 2.

Hypothetically speaking, if there was no federal flood insurance plan, would private insurance companies be insuring against flood and erosion?

Answer Question 2.

No, not on a primary basis, because of the overall catastrophic nature of the flooding peril and, generally for the same reasons as cited above!

I hope the above answers have been helpful and if I can provide any further information please feel free to call me.

Respectfully submitted,

Larry Palmer

Larry W Palmer, Director
Flood Insurance Program

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM KENNETH L. AUSTIN

Q.1. Is a mortgage lender or bank, under both current law and under S. 1405, permitted to give someone a mortgage who cannot obtain Federal flood insurance? For example, under S. 1405, if I own a vacant lot that is deemed to be within the 30-year erosion zone and I want to build a house on it, FEMA is prohibited from giving me a Federal flood insurance policy on that house. My question is, is a bank prohibited from giving me a mortgage on that house? What if I am unable to obtain private flood insurance on the home?

A.1. Under current law a depository institution, specifically banks and thrifts, cannot originate a loan secured by property if the structure is located in a special flood hazard area unless flood insurance is placed in force. A mortgage banker could theoretically originate that same loan, but that loan could not be purchased by Fannie Mae or Freddie Mac. Neither could it be insured or guaranteed by FHA, VA, or Ginnie Mae. Because mortgage lenders are not portfolio lenders, and because these Federally related entities purchase, insure or guaranty the vast majority of loans originated by mortgage bankers, as a practical matter, loans originated by mortgage bankers are required to carry flood insurance.

Current law does not prohibit flood insurance in given zones. Under current law in the example given in Q.1., a bank or thrift could make a loan or a mortgage banker could sell a loan to Fannie Mae or Freddie Mac on a new structure located in the flood zone, so long as flood insurance was purchased and maintained for the term of the loan. Under S. 1405 a bank or thrift could make a loan, even if flood insurance is not available for loans secured by new structures within the 30-year erosion zone, but the bank would have to assume the risk of loss in the event of flood damage, if private flood insurance was unavailable, because S. 1405 prohibits Federal flood insurance for properties located within the 30-year erosion zone.

Q.2. Practically speaking, will a mortgage be issued for a proposed new structure which is located within one of the designated erosion zones, and which therefore does not have Federal flood insurance? Explain why or why not.

A.2. Practically speaking, regulated institutions, such as banks and thrifts, will be inhibited in making such loans because they will have to be held in portfolio and regulatory capital has to be held against assets held in portfolio. Both regulated institutions and mortgage bankers will not be able to sell such loans in the secondary market, because Fannie Mae and Freddie Mac cannot purchase such loans unless insurance is maintained on the property.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM ROBERT J. ENGELSTAD

Q.1. Is a mortgage lender or bank, under both current law and under S. 1405, permitted to give someone a mortgage who cannot obtain Federal flood insurance? For example, under S. 1405, if I own a vacant lot that is deemed to be within the 30-year erosion zone and I want to build a house on it, FEMA is prohibited from giving me a Federal flood insurance policy on that house. My question is, is a bank prohibited from giving me a mortgage on that house? What if I am unable to obtain private flood insurance on the home?

A.1. Under current law, if a property is located in a special flood hazard area but Federal flood insurance is *not* available, a bank is not prohibited from making a mortgage. The prohibition applies only if FEMA makes the insurance available.

Q.2. Practically speaking, will a mortgage be issued for a proposed new structure which is located within one of the designated erosion zones, and which therefore does not have Federal flood insurance? Explain why or why not.

A.2. This would depend on the risk assessment made by the mortgage lender and/or investor. For example, for any property located in a special flood hazard area, Fannie Mae requires flood insurance. If such insurance is not available from FEMA, the homeowner would have to seek private flood insurance. The reason for this policy is to ensure that damage to the property, which is considered a high risk in a special flood hazard area, will be appropriately repaired to ensure that the property adequately secures the mortgage.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM MICHAEL K. STAMPER

Responses of Federal Home Loan Mortgage Corporation

Q.1. Is a mortgage lender or bank, under both current law and under S. 1405, permitted to give someone a mortgage who cannot obtain Federal flood insurance? For example, under S. 1405, if I own a vacant lot that is deemed to be within the 30-year erosion zone and I want to build a house on it, FEMA is prohibited from giving me a Federal flood insurance policy on that house. My question is, is a bank prohibited from giving me a mortgage on that house? What if I am unable to obtain private flood insurance on the home?

A.1. Under current law, Federal flood insurance is generally available only in participating communities (communities that do participate in the National Flood Insurance Program). Federally-regulated lenders may make conventional mortgages (mortgages which are not insured or guaranteed by a Federal agency) secured by properties located in Special Flood Hazard Areas (SFHAs) of nonparticipating communities. However, Freddie Mac and Fannie Mae are prohibited from purchasing mortgages secured by properties located in SFHAs of nonparticipating communities. This latter prohibition applies even where "private" flood insurance may be available. Of course, non-regulated lenders are not subject to current flood insurance law. Current law does not address erosion hazard areas separately.

Under S. 1405, Federal flood insurance would not be available for new construction in a 30-year Erosion Hazard Area (EHA). S. 1405, however, does not impose any restrictions on lending on, or purchasing mortgages secured by properties located in a 30-year EHA. Consequently, even under S. 1405 a regulated lender will be able to originate a loan on a newly constructed dwelling in an EHA and

Freddie Mac and Fannie Mae would not be prohibited from purchasing such a loan. However, Freddie Mac and Fannie Mae could not purchase a mortgage loan secured by properties in an EHA that also has been designated as a SFHA.

Q.2. Practically speaking, will a mortgage be issued for a proposed new structure which is located within one of the designated erosion zones, and which therefore does not have Federal flood insurance? Explain why or why not.

A.2. The fact that an area has been designated EHA puts the prospective lender on notice that there is a possibility of loss due to erosion. The lender would evaluate this risk as one of the factors in deciding whether to make a loan. Other factors include: the appraiser's assessment of the property's marketability (i.e., the appeal of the property, the site, the neighborhood, the community to the marketplace); the size of the down payment; whether insurance for losses to flooding and erosion can be obtained, the likelihood that it can be maintained, and whether the prospective borrower can afford such insurance; whether the resulting mortgage can be readily traded in the secondary market, etc.

Ultimately, the absence of Federal flood insurance may be a deterrent to lending on EHA properties, if only because Federal insurance has proven to be a more dependable source of protection, as the insurance industry's recent retrenchment from homeowner coverage in windstorm-prone areas has demonstrated.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MACK FROM KATHLEEN McCAULEY

The following are the responses to questions forwarded to Kathleen McCauley for the Marshfield Coastal Advisory Committee. We hope the Senators will take no offense at the levity of our subtitles. We appreciate and take very seriously the opportunity to testify before the committee. We hoped to relieve the tedium just a bit!

Q.1. What do you think the impact of mapping erosion zones will be on property values?

A.1. *"LOCATION, LOCATION, LOCATION!"* We have testified that the mapping of erosion zones and the identification of the structures located there will reduce property values. Property values are dependent upon location and variables which reflect present and future economics. Some of these variables include: proximity to schools, availability of fire protection and municipal utilities, nearness to auto traffic and industrial noises, etc. Identification of a structure as being in a *"30- or 60-year erosion zone"* would impair its value because of the allegation that the *land will disappear*. No one will invest in property which could be gone by the time the mortgage is paid.

"HAVE I GOT A DEAL FOR YOU!" Which would you buy? A home within walking distance to the beach with a required yearly flood insurance premium of *$540 . . . OR . . .* A home, *now designated as "erosion prone"*, within walking distance to the beach, but the *required* yearly flood insurance premium is *$4,050*? Obviously the first home was worth more. This simple analogy demonstrates that erosion zones will devalue property. These figures are from FEMA in their October *Questions and Answers about*

S. 1405 Q.8b. FEMA states that "people already living in communities that are subsequently identified as being in an erosion hazard area will have their annual flood insurance premium increased by as much as *750 percent*!

"DON'T TAKE OUR WORD FOR IT!" We have testified as homeowners and sometime homebuyers as to our perceptions of the devastating property value impact of erosion zones. *The National Association of Realtors (NAR) now concurs.* Despite supporting S. 1405 in their September 14th testimony, they have withdrawn that support as a result of the FEMA numbers showing erosion hazard zones triggering "astronomical" flood insurance premium increases. NAR sites the devastation of tax bases for erosion prone communities. NAR calls for a suspension of the mapping and delineation of erosion zones until an economic impact study is completed. *(See Appendix A.)*

"TAKE THEIR WORD FOR IT!" We find the proponents' insistence that erosion zones will not impact property values *disingenuous*. We have attached an erosion awareness poster produced by Massachusetts' Coastal Zone Management (MCZM) and funded by a grant from the Office of Ocean and Coastal Resources Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The poster was widely distributed throughout Massachusetts. *(See Appendix B.)*

The poster depicts a year in the life of a waterfront home: for sale in June, sold in July, a new owner enjoying August at the beach, a wave crashing over the home from a nor'easter in the winter months, and finally, the same home falling off a cliff into the ocean and for sale again in the spring.

The target of this message is obviously the real estate value of coastal homes. The poster represents an organized effort to undermine the value of waterfront property. The implication is that coastal property is a bad investment. MCZM believed this campaign to be an effective method of creating erosion awareness. Massachusetts' Coastal Zone Management is actively promoting the devaluation of Massachusetts' coastal properties.

"POLITICS DOES MAKE FOR STRANGE BEDFELLOWS!" Despite protestations to the contrary, the devaluation of coastal property by the passage of erosion zones seems to be the one thing that the proponents and opponents of this bill agree on!

Q.2. What is there under the current program, and under S. 1405, that will ensure that there will be regular remapping when there is accretion, as opposed to erosion? Am I correct to assume that when accretion is discovered landowners will be given the benefit of this information through perhaps being reclassified as outside an erosion zone, or being given a decrease in their erosion related premiums?

A.2. *NOTHING! NADA! ZILCH! ZIP!* In the current National Flood Insurance Program erosion and/or accretion are not accounted for in the mapping of the Special Flood Hazard Areas.

In S. 1405 there is no definition for accretion, as such it is doubtful that the bill could ever be used to address accretion.

S. 1405 Sec. 604(a) requires the Director to assess the need to revise and update the flood insurance rate maps at least once every five years or upon the request of a State or community providing the State or community making the request agrees to provide at least 50 percent of the cost. Given the fiscal constraints binding local communities and States, it is doubtful that this type of request could be funded.

S. 1405 Sec. 604(b)(8), calls for the establishment of a public review and appeals process for erosion zone determinations comparable to the established review and appeals process for flood elevation determinations. The existing process allows homeowners or communities to challenge flood zone determinations with appropriate technical evidence. If the homeowner bringing the appeal wins the appeal, then the Director shall reimburse the costs of services incurred by that homeowner up to an amount of $250,000.

"HERE COMES THE JUDGE!" The extreme variations for premium rates from erosion zones to non-erosion zones will assure that many homeowners will avail themselves of the appeals process. This will represent exorbitant costs for homeowners, and possibly NFIP if many appeals are successful. It will not be difficult to reach the $250,000 maximum given the expensive mapping and engineering needed to make an appeal. It is not a leap in logic to imagine entire neighborhoods pooling their financial resources to fight an erosion zone delineation.

Any future cooperation between policy holders, communities and NFIP would be jeopardized. Homeowners would be too busy fighting their erosion classification to work cooperatively on solving flood problems!

"A STACKED DECK!" Sec. 604(7) REVISION OF EROSION HAZARD AREAS (A) & (B) requires the Director to consider areas that "are experiencing or have recently experienced erosion rates *in excess of the erosion rate established under this section!" or to consider areas where erosion rates have been "significantly altered otherwise by manmade or induced activity*." Nowhere does S. 1405 authorize the Director to revise erosion hazard areas for accretion, which is not a manmade or induced activity, or for any demonstrated reduction in the predicted rate of erosion. In other words post-storm erosion will be revised but natural beach recoveries will not. It is obvious that the deck is stacked to have the largest erosion zones with the greatest number of homes in them and no clear method to remove an area or property from an erroneously delineated erosion zone.

Q.3. How do you predict erosion without a fixed baseline reference feature? My understanding is that the measuring stick for where these erosion zones will be located could be a movable thing like a dune crest or vegetation line. Even if you average the amount of movement, you still have uncertainty. How can a property owner know with any degree of certainty how to conduct his affairs if it is possible that he may be classified every six months?

A.3. *"THE BLIZZARD OF '78 REVISITED!"* Massachusetts Coastal Zone Management proposes to use the 1978 mean high water line as the line from which to measure erosion. The "1978 mean high water line" is a measure of the average elevation that the high tide reached in that year. The elevation is the vertical distance (up or down) from sea level. In Massachusetts the 1978 mean high tide was 10.5 feet above sea level. This number was seriously skewed by the coastal storm referred to as "the Blizzard of '78." The line from which MCZM would measure erosion would be a contour line on a map representing 10.5 feet above sea level 15 years ago. Erosion then would be measured as a linear distance (horizontal) from a height of 10.5 feet above sea level.

It appears that Massachusetts would designate any elevation below 10.5 ft as already under water and start delineating erosion landward from the 10.5 ft line. The bluffs of Manomet in Plymouth, Massachusetts, which have suffered severe erosion recently, would be well above the 10.5 ft elevation while properties with elevations below 10.5 ft that might never have suffered a flood loss could be considered eroding. Using elevation as a presumption of erosion could cause the entire State of Florida to be designated as an erosion zone.

"HOW HIGH IS HIGH?" While there is a direct correlation between elevation and frequency of flooding, there is not a direct correlation between elevation and erosion. In fact, it is often unstable bluffs, high above sea level, that suffer sudden, and therefore dangerous, erosion. Erosion is caused by a combination of material type, exposure, ocean bottom conditions adjacent to the shore and weather and more. Proper evaluation of erosion involves structural, geological, hydrological and soil engineering, as well as wave mechanics. Erosion is site specific.

"NOW YOU SEE IT, NOW YOU DON'T!" Massachusetts' choice of an elevation as the line from which to measure erosion, or the choice of a vegetation line or a dune crest, all represent natural elements subject to movement by erosion or accretion. These movable benchmarks do not offer any permanency over the proposed 30- and 60-year time frames. More importantly, this type of benchmark, particularly in the case of an elevation, does not offer the homeowner, potential homebuyer, real estate agent, or local official a readily identifiable and inarguable measure of erosion.

Actual erosion must be measured linearly (horizontally). The distance from a fixed benchmark like a seawall, street centerline or foundation corner to the high water line, measured over a period of years would show the actual *average* erosion rate for that period of years.

"SHELL GAME" It should be understood that the actual erosion rate for the first 2 years of a 30-year period could be completely different than the erosion rate for the last 2 years of the same 30-year period. In determining *actual erosion rates* the number represents an *average*. The projection of the actual average erosion rate forward to predict the next thirty years' erosion represents a mathematical possibility with a percentage of error that cannot be quantified without predicting the next thirty years' weather. We have attached Figure 6–1, page 127, of *Managing Coastal Erosion*, prepared for FEMA by the National Academy Press to demonstrate the phenomenon. *(See Appendix C.)*

"YOU NEED A Phd!" The inherent problem of delineating erosion zones was well illustrated during the September 14th hearing as Senator Kerry repeatedly asked the question "Why should the Federal Government insure property that *will be gone in thirty years*?" The Senator's question illustrates the common misinter-

pretation of the meaning of "erosion zones." Predicted 30- and 60-year erosion rates represent only a *percentage of possibility* that erosion *might* occur. Senator Kerry, the author of S. 1405, does not understand the math, how can homeowners, homebuyers, realtors and town officials be expected to.

"NATIONAL BUCKS VS. LOCAL BENCHES." Another problem, illustrated by the comparison between Florida and Massachusetts, is that Florida could, and most likely would, choose a different benchmark for measuring erosion than Massachusetts. The erosion insurance premium rates would be set nationally while the erosion rates would be set locally. The result would be some States would carry a heavier premium burden than others based upon the benchmark chosen by the individual State.

"YOU GET WHAT YOU PAY FOR!" We have attached a letter from Mr. John DeRugeris, Principal Engineer and President of Coast Line Engineering of Mattapoisett, Massachusetts. Coast Line Engineering is a national company with additional offices in Washington and California. Mr. DeRugeris estimates that the cost of coastline mapping is, at a minimum, $560 per thousand feet. *(See Appendix D.)* At that rate, accurate mapping of the coasts of the United States would cost anywhere from $250 million to $750 million rather than the $25 million that the S. 1405 authorizes. Mr. DeRugeris states in his letter: "It appears that if this program intends to stay within budget only a crude study will be performed that will result in a rate of erosion map that will be largely unreliable, inaccurate, unfair, and would be continually challenged."

"IF THE FLOODS DON'T GET YA THE GOV'MT WILL!" We have attached a letter from a homeowner from Scituate, Massachusetts. The home is located in an Upton Jones buyout area, Peggotty Beach, that would most assuredly be designated an erosion zone. *(See Appendix E.)* The homeowner has already complied with FEMA standards by elevating the home. The mitigation has proven successful. The home suffered no losses during the last three severe storms to hit the Massachusetts' coast while neighboring pre-FIRM homes were lost. What further can be gained by mapping erosion and charging this homeowner thousands more dollars for flood insurance? The experiences of this homeowner demonstrate that construction standards are what is needed to eliminate losses and the mechanism is already in place to require those construction standards.

"I'M FROM MISSOURI!" In conclusion we ask you to weigh the negative impacts of erosion zones vs. the as yet to be demonstrated positive impacts of erosion zones. There has been plenty of evidence submitted to demonstrate that the National Flood Insurance Program works as intended by requiring coastal property owners to shoulder the costs of their own disaster assistance. There is evidence that erosion zones will devalue property, that erosion zones will be expensive ($250 million for mapping not $25 million), and that litigation will result from inaccurate erosion zones coupled with astronomical insurance premiums. However, there has been no evidence submitted that erosion zones are needed, to the contrary, the FIA has testified that mapping, delineation and charging for erosion will not improve the solvency of the fund, and despite

much discussion of the "environmental benefits" of mapping erosion zones those benefits remain illusive.

"FOR SALE: ONE MANSION $185K!" The National Flood Insurance Program has been repeatedly referred to as "a welfare program for the rich." Nothing could be further from the truth, and the proof is in the amount of insurance provided by the program. The current maximum amount available for residential property is $185,000, hardly the value of a mansion! Equal access to our coasts includes home ownership. Withdrawal of affordable flood insurance for the middle class now would effectively revoke access to the coasts for all but the wealthy.

APPENDIX

A) National Association of Realtors, letter dated October 26, 1993.

B) Coastal Zone Management, Coastal Hazard? poster.

C) Managing Coastal Erosion, National Academy Press 1990
Figure 6-1, p.27. Prepared by National Research Council

D) John DeRugeris, PE & President Coast Line Engineering, letter dated November 4, 1993.

E) William P. Slocum, Scituate, MA, homeowner,
letter dated November 2, 1993

F) Revised definition of Repetitive Loss submitted by Marshfield Coastal Advisory Committee.

APPENDIX A

NATIONAL ASSOCIATION
OF REALTORS®
REALTOR®
The Voice for Real Estate®

NATIONAL ASSOCIATION OF REALTORS®
777 14th Street, N.W.
Washington, D.C. 20005-3271

William R. Chee, President
Dr. Almon R. Smith, CAE, Executive Vice President
Stephen D. Driesler, Senior Vice President
& Chief Lobbyist
Government and Political Relations

Telephone 202 383 1238

Fax 202 383 1134

October 26, 1993

1--

Dear Senator 2--:

As the Banking, Housing and Urban Affairs Committee prepares to consider S. 1405, the NATIONAL ASSOCIATION OF REALTORS® wishes to express our major concerns with the bill and support for amendments to the proposed flood insurance reform legislation.

As you know, NAR endorsed S. 1405 in testimony before the Housing Subcommittee in September, but regrettably we must rescind that support in light of new information that has recently become available. At the time of our testimony we felt that since S. 1405 did not restrict the rights of property owners to develop their land, that it merited our support. We based our support on the fact that the bill language only addressed the denial of federal flood insurance for certain classes of new structures in the 30- and 60-year zones. Supposedly, existing structures, other than those who were considered "repetitive losses," would be unaffected by S. 1405. There were, at the time, no references in S. 1405 to the use of erosion hazard zones as justification for increasing premiums for existing, non-repetitive loss, structures.

In our testimony, we expressed concern that we had repeatedly been unable to get any accurate predictions from the Federal Emergency Management Agency (FEMA) as to the impact of S. 1405 with regard to the number of properties covered and the impact on premiums. Unfortunately, since our endorsement, information has come to light showing that FEMA will use the mapping of the 30- and 60-year zones to justify the imposition of astronomical increases on existing structures, once the lines have been delineated. As you can see from the attached FEMA document, premiums could rise to over $20,000 per year for certain classes of properties in erosion hazard zones. If such premiums were escrowed by the lender, as required under S. 1405, in the most extreme cases the monthly flood insurance premium for some properties could actually exceed the monthly payment for principal and interest on the property!

Premiums at such exorbitant rates, will make it impossible for any but the most wealthy individuals to qualify for a mortgage in coastal communities. Rate increases, such as evidenced in this FEMA document, would have a chilling effect on housing affordability and home values, and will devastate the tax bases of coastal communities. And, if the true intent of this legislation is to broaden the risk pool and encourage participation in the National Flood Insurance Program (NFIP), we would argue that this legislation will have the opposite effect. In fact the most recent

[illegible]

committee print of S. 1405 does attempt to alleviate some of the impact by imposing a cap on premium increases of 10% per-year. However, the use of simple compound interest shows that it will not take long for the impact of these rates to be felt on the average American in a coastal or riverine community.

As a result of this additional information, the NATIONAL ASSOCIATION OF REALTORS® no longer feels that it can support S. 1405 without significant changes to the bill. We support amendments which would postpone the mapping and/or the implementation of erosion hazard zones until an economic impact statement is prepared. We feel that before the federal government spends $25 million of policyholder premiums on mapping, that we should know the answers to some basic questions such as how many properties will be affected by this bill and what the impact of erosion zones will be on property values, community tax revenues, employment, economic development and future premiums for existing structures.

As you know, the passage of flood insurance legislation has been tied up for a number of years because of misunderstanding and misinformation on this issue. In good faith, the NATIONAL ASSOCIATION OF REALTORS® sought to help break the stalemate on this bill, by our prior endorsement. We no longer feel that we can support S. 1405 without some sort of assurance that this bill will not devastate the economies of coastal and, eventually, riverine communities. Once, and for all, let us remove the confusion that surrounds this issue, and get some clear, unequivocal data, before we act. We urge your support for the amendments to the erosion sections of the bill which call for the suspension of mapping, and/or the implementation of erosion hazards zones, until the completion of an economic impact study.

Sincerely,

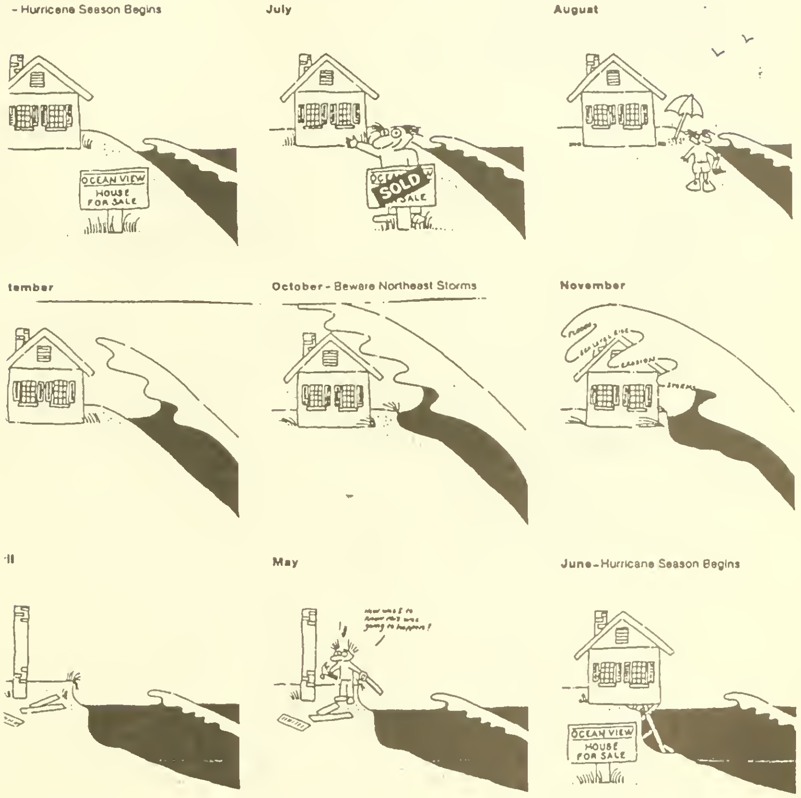
Steve Driesler

Stephen D. Driesler
Senior Vice President and Chief Lobbyist

Attachment

PENDIX B

Coastal Hazard?

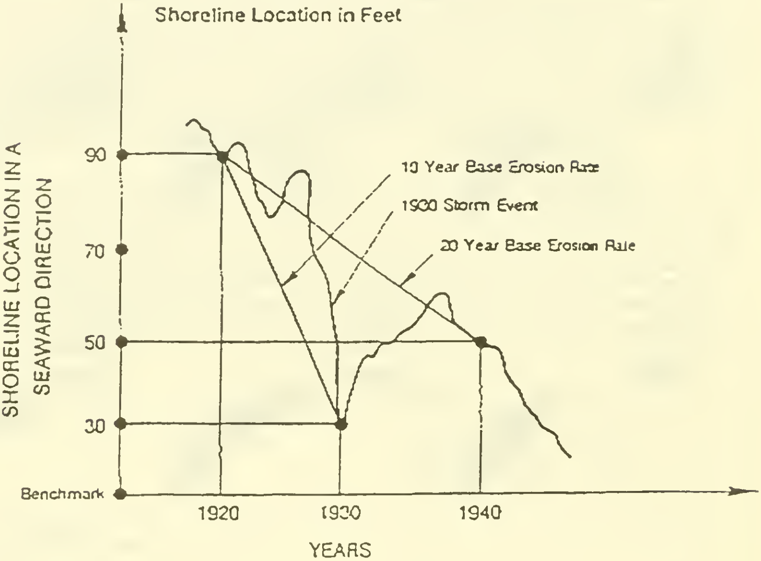

- Hurricane Season Begins
OCEAN VIEW HOUSE FOR SALE
July
SOLD
OCEAN VIEW HOUSE FOR SALE
August
tember
October - Beware Northeast Storms
November
FLOOD
SEA LEVEL RISE
EROSION
STORMS
il
May
How was I to know this was going to happen!
June - Hurricane Season Begins
OCEAN VIEW HOUSE FOR SALE

ou are considering buying waterfront property or building there you should know the hazards! fore purchase or construction you should ask these questions:

s the property eroding? How fast?
ow high has storm water reached?
as it been damaged by storms?
as it been flooded?
hat flood zone has FEMA designated for the property?
If your building is damaged by a storm or flood, can you rebuild?
Will you be allowed to protect the property with a seawall?
Can you get flood insurance?
Is FEMA relocation funding available?

APPENDIX C

PREDICTING FUTURE SHORELINE CHANGES



Rate of Erosion 1920 to 1930: $\frac{90-30}{10} = 6$ ft/yr

Rate of Erosion 1920 to 1950: $\frac{90-50}{20} = 2$ ft/yr

FIGURE 6-1 Example of the variation of the rate of erosion as a function of the duration of the period of observation, 1920 to 1940.

APPENDIX D

PACIFIC
COASTLINE ASSOCIATES

November 4, 1993

Doris Crary,

Re: Senate Bill 1405
Establishment of Erosion Flood Zones

Dear Ms Crary,

In furtherance to our conversation this date I am pleased to support the efforts in opposition to this Bill.

I am a Professional Engineer, licensed in nine coastal states on both coasts. I have lived and worked near the coast all of my life (50 years), and have been professionally involved in Marine and Coastal construction and restoration projects for the past twenty years. This has included the entire East Coast from Northern Maine to the Caribbean, and the West Coast From Neah Bay, Washington to Central California. This has included coastal protection, as well as beach nourishment and coastal construction projects.

I have reviewed your comments on this program's proposed methodology for determining and measuring coastal erosion areas. As I understand it, the proposed methodology for making these determination will be based on a generic formula which relates to the elevation of the shoreline, and so-called historic data, and is based on survey data dating back to the turn of the century. What I have seen of this plan appears seriously flawed from a realistic viewpoint, since it fails to take into account the physical characteristics of individual shorelines. Typically these programs also attempt to apply the same formulae to all areas, regardless of location, and assume the same conditions apply from the outer banks of Cape Hatteras to the Rocky Coast of Northern Maine Proper studies of coastal geology should include soils data, the offshore topography, the realistic wave and shoreline drift climate, proper physical earth models as well as accurate historic data. It appears that the proposed bill plans very little of this in its studies.

This is evident from the proposed budget to perform the studies, which I am told is in the range of $25,000,000 to analyze 84,000 miles of shoreline, that little, if any, actual field investigation or detailed analysis is intended. In the past FEMA has evaluated coastal conditions using typical shoreline cross sections (Transects) that range from 1000' to 3000' apart. Based on my experience evaluating these flood maps on a detailed basis, this results in a rate of error in determining actual coastal flood conditions on a site specific basis, in the range of 20 to 40%. Some of these errors are quite significant. Assuming that an erosion study would also follow these guidelines, and that the average transect spacing would be 2000 feet, this would require 222,000 transects that have been budgeted at $112.00 each to perform. Assuming, hat these studies would be handled on a contract

uctural/Marine Engineering · 811 Airport Road • Monterey, CA 93940 • (408) 649-1712 • FAX (408) 649-1778

consultant basis (as they have in the past), at an average rate of $65.00 per hour, this means that 1.75 manhours would be spent evaluating each transect condition. Based on my experience, the time required to properly, and accurately evaluate shoreline erosion potential characteristics would be about 10 to 30 times the cost budgeted.

It appears that if this program intends to stay within budget, only a very crude study will be performed, that will result in a rate or erosion map that will be largely unreliable, inaccurate, unfair, and would be continually challenged. Such an inaccurate study would prove nothing, and would be a complete waste of taxpayer money.

We also spoke of the maps that Coastal Zone Management has published, that purport to be an accurate representation of the coastal erosion process, dating back to the turn of the century. I have been involved in coastal surveys and mapping as it related to my work for over 20 years, in that time I have found most of the coastal data predating 1945 to be highly unreliable. In fact much of the available data between 1945 and 1965 has also proven only marginally usable, except in cases of substantial shoreline movement. My opinion is that any data that predates the 1927 Geodetic Survey is purely unsubstantiated conjecture.

I hope I can be of some help in your opposition to, what appears to be, yet another unfair tax on people that happen to like living near the water.

Very truly yours,

John A. DeRugeris, P.E.
President,
Coast Line Engineering Inc.

11- **APPENDIX E**

48 Town Way Ext.
Scituate, Mass.

November 2, 1993

To Who It May Concern:

Please be informed that the dwelling located at 48 Town Way Ext., Scituate, Massachusetts, was rebuilt after the Blizzard of 1978, in compliance with the specifications set forth by regulatory agencies.

The specifications included, but were not limited to:
1. The structure be placed on pilings driven to a minimum of five (5) feet below mean water.
2. The elevation of the first floor of the structure be at twenty-one (21) feet above mean water.

Subsequent to the rebuilding, the dwelling located at 48 Town Way Ext. has not sustained any storm damage or storm related damage nor has any insurance claim been filed in relation to the said property for any reason.

Any increase in the premium cost for Flood Insurance on property rebuilt to Federal, State and Local specifications would be totally unjustified.

Sincerely,

Ruth M. Slocum

William P. Slocum
William P. Slocum

APPENDIX F

RECOMMENDED EXPANDED REPETITIVE LOSS DEFINITION

We recommend expanding the definition of a 'repetitive loss structure' in S1405 by adding to the end of SEC.102 (a)(15) p.12 line 2 ...

"...or has incurred flood related damage on three or more occasions during a ten year period ending on the date of the last event in which the total cost of repair equaled or exceeds 100 percent of the value of the structure."

It is important to note that classifying as a repetitive loss structure triggers the payment of mitigation monies from the NFIP fund. The definition of repetitive loss must strike a balance between mitigating for repetitive loss and weakening of the financial soundness of the fund by paying out too much mitigation money too fast. It is with this consideration in mind that we recommended that the expanded definition to include multiple smaller losses use the 100% criteria rather that the 50% criteria.

We would also note that our recommended definition does not address the potentially serious problem of large condominium complexes classifying as repetitive loss structures. Elevating condominium complexes to meet the FEMA guidelines for rebuilding after a loss will, in most cases, be structurally impossible. If the condominium complex falls out of compliance with FEMA guidelines, then cost of flood insurance for the owners would become unaffordable. The costs to the nation's retirees, many of whom moved south and invested retirement funds in condominiums, would be devastating.

Marshfield Reporter

46 MACUMBER'S WAY
MASHFIELD MA 02050

1993
Vol. 7, No. 52

October 7, 1993

Telephones-Editorial, 1-800-242-0264; Advertising, 1-800-242-0264; Speak Out 834-0125

Not afraid to make waves

By Carol Funderburk
MPG Newspapers

MARSHFIELD — The voice of Marshfield is being heard in the nation's capital.

Two Marshfield residents, Kathy McCauley and Doris Crary, are making sure that Washington bureaucrats are hearing the voices of local coastal residents. McCauley went to Washington, D.C., last month to testify before the subcommittee of housing and urban affairs, where testimony is being heard on the national flood insurance reform act authored by U.S. Sen. John Kerry, D-Mass.

"We have no problem with two parts of this bill," said McCauley last week. "However, the third part of the bill, the establishment of 30-year erosion zones, will devastate the tax base of Marshfield as well as other coastal [illegible]."

McCauley and Crary outlined the main components

Making waves

Continued from page A1

of the bill:

- If your mortgage is with a bank that is federally regulated, you have to have flood insurance. "We have no problem with this," said McCauley. "Basically, this tightens compliance and it will broaden the policy base."
- Flood insurance will cover the cost of complying with new building codes. "Under the old regulations," said Crary, "if you lost your home, the flood insurance would cover the cost of rebuilding, but not of elevating the home which is a new regulation. Now, the premiums will be raised to cover the cost of mitigation. The definition of repetitive loss needs to be expanded to bring more people in, but basically, we're happy with this provision."
- 30-year erosion zones would be established along the entire coastline. "This is where we have a problem," said McCauley. "In addition to doubling premiums, at least, it will destroy the tax base of this town. Who will be able to sell their house if they have to tell a prospective buyer that the home is in a 30-year erosion zone, which according to the regulation means that in 30 years, the home will no longer be here. It's not just a coincidence that the number 30 was picked for the erosion zone. That's the average length of a mortgage."

The areas most affected by the bill are Brant Rock, Green Harbor and the area along [illegible] Avenue and McCauley and Crary [illegible] Senator Kerry sees it all very differently," said McCauley. "That's why I went to Washington. We don't believe the interests of coastal residents have been served by this bill."

Staff photo/Carol Funderburk

All the way to Washington — Kathy McCauley (left) and Doris Crary are taking the concerns of Marshfield coastal residents all the way to Washington.

McCauley and Crary, both members of the town's coastal advisory committee, said they prepared a package to support their argument which included support from selectmen and the board of assessors, as well as the endorsement of coastal groups from Massachusetts, New York and Florida.

McCauley's testimony questioned how actual erosion can be measured and the cost of studying and mapping erosion zones. McCauley and Crary also maintain that the value of [illegible] property [illegible] within 1,000 feet of the seawall," said Crary. "The beach areas contribute substantially to the tax base of this town."

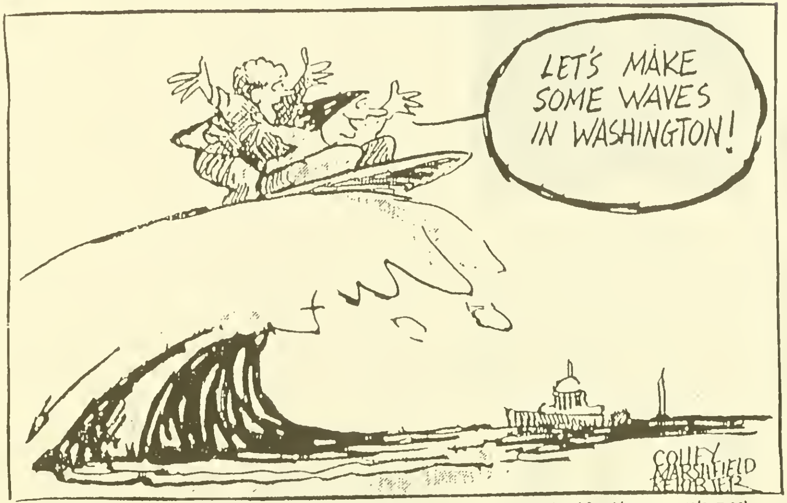
The bill is scheduled to go to the full committee on banking, housing and urban affairs on Oct. 14, Crary said. "We hope people will write Sen. Kerry and complain about this." Crary said, "Initially, the bill excluded flood insurance for people living in the hazard zones. Washington received a flood of letters from Marshfield and that was changed. Letters can make a difference. Tell Sen. Kerry to take the erosion zones out of the bill."

Jonathan Winer of Kerry's office did not return our phone call before deadline.

For more information on the bill, call Crary [illegible]

Pg A8 MARSHFIELD REPORTER Thursday, October 14, 1993

OPINION


LET'S MAKE SOME WAVES IN WASHINGTON!
COLLEY MARSHFIELD REPORTER

Kathy McCauley and Doris Crary are getting their points across concerning the national flood insurance reform act.

FRANK & ERNEST

It's hard to get upset over something like a 30 year erosion zone because it sounds so far away, and so far removed from those residents who don't live along the coastline. But Ernest is glad at least two people are worried about what's going to happen if this erosion zone bill goes through. Kathy McCauley and Doris Crary have done their homework on a federal bill that could alter the nation's coastline (not to mention flood insurance premiums) and are raising serious questions before it becomes law and starts to have a local impact. They say the biggest local impact will be the erosion of the tax base in Marshfield. How many times have we seen Washington sneak something through and by the time residents know what's hitting them, they're already paying for it?

Ernest has a feeling people who own property along the coast may be thanking these two residents 30 years from now.

Frank is getting tired of hearing that the national flood insurance reform act will devastate the tax base of Marshfield. In Frank's opinion, living that close to the ocean can be dangerous and whatever Congress can do to move people off the shoreline will be a benefit to everyone in

TESTIMONY OF THOMAS P. DELLA TORRE

PRESIDENT AND CHIEF OPERATING OFFICER
TRANSAMERICA FLOOD HAZARD CERTIFICATION

JULY 27, 1992

Thank you for the opportunity to express our views on S.2907—the National Flood Insurance Reform Act of 1992.

There is little doubt that the Flood Disaster Protection Act (FDPA) is not achieving the intent of Congress.

- A study by the General Accounting Office revealed that only about 15 percent of homes located in Special Flood Hazard Areas (SFHA) are covered by flood insurance.
- Whenever there is a major flood, the Federal Insurance Administration finds that the majority of homes incurring flood damage are not covered by flood insurance. Uninsured property owners often seek relief from other Federal or local government sources, including the Federal Disaster Relief Fund, thereby exacerbating the budget deficit.
- Recent reviews that we have performed of portfolios of existing loans have revealed that many properties located in a SFHA (in some cases as high as 9 percent) are not covered by flood insurance.
- Events in Sacramento, CA, Minnesota and elsewhere have shown widespread noncompliance with the FDPA.

Moreover, studies by meteorological experts predict greatly increased storm activity in the future and warn us not to be lulled by unusually low activity in the recent past. The problem is likely to get much worse before it gets better.

In our prior testimony we have provided many of our first-hand experiences that illustrate the range and nature of the compliance shortcomings of some lenders. Today, I would like to speak to a few remaining issues for your consideration.

We believe that S.2907 effectively addresses the major causes of non-compliance and will result in greatly increased protection for homeowners, lenders, and taxpayers. It has addressed nearly all of the concerns we have expressed in our prior testimony before this committee.

The compliance section adds very few new requirements on lenders and will not put a burden on those lenders currently in compliance.

Nor will it put a burden on borrowers with guaranteed flood hazard determinations ranging from $10–$40, by far the lowest fee among the closing costs incurred by borrowers.

The standard hazard determination form called for by the legislation, which formalizes what many regulators and lenders now do, will create consistent record keeping procedures and thereby assist examiners.

For all of these reasons, in our view, S. 2907 is needed to bring the Flood Disaster Protection Act in step with the lending industry of the 1990's. And we strongly recommend that it be passed even though it increases the liability of private flood hazard determination companies like ours who must guarantee their work.

When we perform a flood hazard determination for a lender, we, in effect, assume that lender's liability. Any legislative provision, therefore, that increases lender liability automatically increases ours.

Clearly, determining accurately the flood hazard status of a property depends largely in the quality of the flood map being used. A flood map is no better than the engineering study and the base map upon which the floodplain is depicted. Flood maps must be accurate and current and users must be advised when new maps are being issued and when changes to existing maps are made through Letters of Map Amendment (LOMA) and Letters of Map Revision (LOMR).

We believe that the emphasis must be on the quality of the maps rather than on the media (paper, fiche, digital, CD–ROM) by which they are delivered to users.

We support those provisions in S. 2907 which are directed to improving the quality and currency of flood maps as well as the notice of flood map changes.

Flood compliance is largely a front-end issue; that is, if the flood hazard status of a property is accurately determined at the time a mortgage loan secured by improved real estate is made, increased, renewed, or extended, and appropriate flood insurance is purchased prior to closing, in approximately 7½ years (the average life of a mortgage) the problem of non-compliance will be minimized.

A key question is how to assure that the flood hazard status of properties is kept up to date when new flood maps are issued. S. 2907 currently provides that whenever a loan is sold or transferred and the original determination is more than 5 years old, a new flood hazard determination must be performed.

Some consider this excessive and suggest instead that FEMA publish a list of areas where significant remapping has occurred. This "constructive notice" would trigger the requirement for lenders to review loans within significant remap areas.

We support the "constructive notice" suggestion as the most practical approach coupled with the provision in S.2907 that lenders may require flood insurance any time it is determined that a property is in a SFHA.

Finally, there is the question of what to do about existing portfolios of mortgage loans which may not be in compliance for whatever reason. We submit that this is a risk management issue and only Congress can decide if it is an acceptable risk to concentrate on the front-end side and let time solve the problem of existing noncompliance.

I should add that my company has no stake in that decision. We do not profit from portfolio reviews which we perform for no fee or greatly reduced fees and we have no financial interest in the sale of flood insurance. Our charter is to assist lenders in complying with the law and we pledge our best efforts to fulfill that charter, whatever that may entail.

Without new legislation tightening controls on flood hazard determinations and the purchase and maintenance of flood insurance, we are only postponing the inevitable. At the same time, lenders must be given the authority they need to comply with the wishes of the Congress. S. 2907 does both.

The current situation with only about 15 percent of homes located in Special Flood Hazard Areas covered by flood insurance is a disaster waiting to happen. We urge you to enact the lender compliance elements of this legislation. Through increased lender compliance, Congress can insure the health of the National Flood Insurance Program by building the fund through increased numbers of insurance policies and premium dollars to support the full range of needs of the program.

SEPTEMBER 14, 1993

Transamerica Flood Hazard Certification has performed more than 3,000,000 flood hazard determinations since the company was formed in 1977. Each month, we provide determinations all across the Nation to between 1,500 to 2,000 lenders, large and small, national, regional, and local.

Over the years, we have worked closely with the Federal Insurance Administration, Fannie Mae, and Freddie Mac to help make the National Flood Insurance Program work effectively.

We have first hand experience with lenders, borrowers, appraisers, surveyors, and communities and we are well aware that existing legislation has not fully achieved the intent of Congress to minimize the economic impact of floods on individual homeowners, communities, and the Federal budget. The best estimate is that only about 15 percent of properties located in Special Flood Hazard Areas (SFHA) are protected by flood insurance.

We support S. 1405, the National Flood Insurance Reform Act of 1993. We believe it is an excellent bill which, with some fine-tuning, will come to grips with the fundamental issues underlying the problems of noncompliance, and through increased compliance, funding for mitigation efforts will be more readily available through an expanded policy base and the increase in the flood insurance fund.

PROBLEM #1—AUTHORITY TO IMPOSE FLOOD INSURANCE AFTER CLOSING

Current legislation does not clearly permit lenders to impose flood insurance after closing even if they learn that the original flood hazard determination was incorrect or if new or revised flood maps have been issued by the Federal Emergency Management Agency (FEMA) changing the status. With an average of 6,000 flood map changes per year, a great many homes whose flood hazard status has changed from "not in" to "in" a SFHA will not be covered by flood insurance.

S. 1405 addresses this issue, but we believe some minor adjustment to the language in the bill would strengthen this provision. We suggest that Sec. 204(e) "Required Actions By Lender" be revised as follows:

> (1) Notification to Borrower of Lack of Coverage. If, at any time during the term of a loan secured by improved real estate or by a manufactured home located in an area that has been identified by the Director as an area of special flood hazard and in which flood insurance is available under this title, a regulated lending institution or Federal agency lender determines that the building or manufactured home and any personal property securing the loan held or serviced by the regulated lending institution or Federal agency lender is not covered by flood insurance, for any reason, in an amount not less than the amount required by subsection (b)(1), the regulated lending institution or Federal agency lender shall notify the borrower that such flood insurance shall be purchased at the borrower's

expense, an amount of flood insurance that is not less than the amount required by subsection (b)(1), for the term of the loan.

Notwithstanding any Federal, State or local law if, not later than 60 days after receiving such notification, the borrower fails to purchase such flood insurance, the regulated lending institution or Federal agency lender shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the regulated lending institution or Federal agency lender in purchasing the insurance.

PROBLEM #2—COMPETITIVE DISADVANTAGE

It is a well-known fact in the industry that borrowers seldom voluntarily purchase flood insurance. Compliant lenders, therefore, can be at a competitive disadvantage when they notify borrowers that flood insurance is required by law and is a condition of the mortgage. We know firsthand of instances when borrowers have then gone to another lender which did not require flood insurance. By extending the requirement to more lenders, which the bill does, Congress lessens this problem.

We recommend the following additions, all of which were in previous proposed legislation, to S. 1405 to help create a level playing field:

(1) Give lenders specific authority to pass along the flood search fee, including FHA and VA loans notwithstanding any Federal, State or local law. We suggest the following wording be inserted into Sec. 205(e). "Notwithstanding any other Federal, State, or local law, any user of the Standard Determination Form as described in Sec. 1365(c) may charge the borrower a reasonable fee for the costs of determining whether the improved real estate or manufactured home securing the loan is located in an area of special flood hazards."

(2) Specifically prohibit waiving the flood insurance requirement for any reason.

PROBLEM #3—INACCURATE DETERMINATIONS

Many lenders use third parties such as flood determination firms, appraisers, or surveyors to make the flood hazard determination at loan origination. There are some flood zone determination companies that have the ability to monitor the flood hazard status of the loan for the life of the loan. S. 1405 includes the provision that any such third party must guarantee the accuracy of its work.

We support this provision, but we believe that the legislation should be more explicit in defining the guarantees. We have seen guarantees which are limited to a refund of the flood search fee or which have very large deductibility rendering the guarantee meaningless. We believe S. 1405 should include minimum standards for the guarantee to encourage greater accuracy in making determinations.

We recommend that if a wrong determination was made the third party be held liable for reimbursing the homeowner or the lender for all damage and if the determination was in error and flood insurance was ordered when it was not required, the third party should reimburse the homeowner for all premiums paid.

We also support the monetary penalty provisions in S. 1405 as a means of improving compliance.

PROBLEM #4—EXAMINING FOR COMPLIANCE

We believe the Standard Flood Hazard Determination Form called for in S. 1405 will make it easier for examiners to determine lenders' level of compliance and it will also benefit the secondary market in identifying loans that must be tracked for flood insurance renewal.

PROBLEM #5—NO EVIDENCE OF FLOOD INSURANCE AT CLOSING

We believe that S. 1405 should include a provision requiring lenders to notify borrowers at least 10 days in advance of closing, or at time of commitment, whichever is earlier, that the property is in a SFHA and evidence of flood insurance is required prior to closing.

These are the current FEMA guidelines which we believe should be incorporated into S. 1405. If a borrower finds out at closing that flood insurance is required, there is no way to be in compliance since there is a 5-day waiting period for flood insurance to be in effect. Moreover, there is a serious consumer protection issue involved when a borrower comes to closing and learns about a significant factor that may have affected the purchase decision.

In terms of compliance, we are aware of cases where borrowers who were first notified at closing that flood insurance was required and promised to purchase the insurance after closing but failed to do so.

PROBLEM #6—PORTFOLIOS OF EXISTING LOANS

We agree that the portfolio review requirement not be made part of this legislation. It is nevertheless critical to update portfolios as new or revised flood maps are issued. Therefore, we recommend that the "constructive notice" provisions be included in the legislation. With a significant number of new or revised flood maps issued each year by FEMA, and unless lenders/servicers are required to review the specific portion of their portfolio these issuances affect, there will continue to be a large number of properties in SFHAs not covered by flood insurance.

We support the provision that requires FEMA to give notice of the publication of new and revised flood maps and Letters of Map Amendment and Letters of Map Revisions.

PROBLEM #7—COMMUNITY INVOLVEMENT IN MAKING DETERMINATIONS

Sec. 1364(e) requires participating communities to notify and warn homeowners and "known lenders" when individual properties are reclassified as in a SFHA on a new or revised flood map. This implies that the communities will be making flood zone determinations. There are a number of questions to be raised in connection with this approach:

(1) How will it be determined what source documents communities will use for flood determinations? Will there be penalties for using unofficial maps (official flood maps are issued by FEMA), or using the wrong flood map?

(2) In accordance with the guarantee provision, will the community be required to guarantee accuracy of its determinations and be held liable for erroneous determinations?

(3) How will the community determine which lenders are active in their community? What about unknown lenders?

(4) Since many lenders sell or transfer the servicing of their mortgage loans to firms located all over the nation, and the servicer is responsible for updating, how will the communities know whom to notify?

We agree that communities and FEMA should be partners in community awareness programs but this provision is unwieldy and unworkable as written, and should be deleted from the bill. We recommend replacing the entire section with the following:

(c) Participating Communities.

The Director shall by regulation require each participating community, upon receiving the semiannual list prepared and distributed by the Director of all changes, revisions, and amendments made to the flood insurance rate maps during the preceding 6 months, to determine whether any portion of their community has been affected. To ensure the public and lending institutions in their community are aware that properties within the community may have been affected by changes, revisions, and amendments made to the flood insurance rate maps, the community will provide notices in local publications, or notices by other reasonable methods. The community will also advise the public, if they are notified by the lender/servicer that their property is determined to be in a special flood hazard area, of the requirement to purchase Federal flood insurance.

PROBLEM #8—RELIANCE ON UP TO FIVE YEAR OLD DETERMINATIONS

We believe that Sec. 205(e) which permits reliance on a previous determination less than five years old to be counterproductive. As mentioned above, FEMA estimates that there is an average of 6,000 new and revised flood maps issued annually. Inevitably, the change in flood status of many properties will be missed over five years resulting in uninsured flood losses on properties in a SFHA, the situation the legislation is designed to eliminate.

In addition, the question of third-party liability arises and the issue of contractual relationships between the original lender and subsequent lenders is unclear.

We are confident that S. 1405 with some of the minor modifications suggested, will achieve the objectives of Congress to create a self-sustaining National Flood Insurance Program that will protect lenders, homeowners, and taxpayers from the economic impact of disastrous floods.

Thank you for the opportunity to express our views.

ADDITIONAL COMMENTS ON S. 1405

AUGUST 31, 1993

Transamerica Flood Hazard Certification has performed more than 3,000,000 flood hazard determinations since 1977. We have first hand experience with lenders, borrowers, and communities all across the Nation and we are well aware that existing legislation has not fully achieved the intent of Congress to minimize the economic impact of floods on individual homeowners and on the Federal budget.

As has been stated repeatedly, the best estimate is that only about 15 percent of properties located in Special Flood Hazard Areas (SFHA) are protected by flood insurance. Although some of the uninsured properties do not have mortgages, and are thus not covered by current legislation, there is little question that a majority of high-risk households, including those with mortgages, do not carry flood insurance.

The Flood Disaster Protection Act of 1973 is clear. No Federally-connected lender may make, increase, renew, or extend a mortgage loan secured by improved real estate, or a manufactured home, without first determining whether the insurable structures are located in a SFHA and, if so, requiring that flood insurance be obtained prior to closing and maintained for the life of the loan.

Nevertheless, data released by the Federal Emergency Management Agency (FEMA) in August of 1993 show that in the nine Midwestern States affected by the recent floods, less than 5 percent of the households located in a SFHA were covered by flood insurance.

The impact of this situation on the Federal budget is also clear. The National Flood Insurance Program is denied premium income with which to settle claims from those households at greatest risk and may have to exercise its authority to borrow from the U.S. Treasury. And FEMA will pay billions in disaster relief to homeowners whose losses could have and should have been covered by flood insurance.

While non-compliance is a significant factor, it is also true that the mortgage lending industry has undergone major changes since 1973 not anticipated and therefore not dealt with by current law.

We therefore strongly support legislation which takes into account both the issues of compliance and the realities that have changed the face of the mortgage lending industry.

We believe that S. 1405 offers the framework for such legislation and that with some fine-tuning will prove beneficial to all concerned. We have several specific suggestions:

1. Current legislation does not permit lenders to impose flood insurance after closing even if they learn that the original flood hazard determination was incorrect for whatever reason. This appears to be counter to the purpose of the legislation. Given the history of spotty compliance and the frequency and volume of flood map changes, we believe it is critical that S. 1405 include a provision that lenders may require flood insurance whenever it is determined that the insurable structures on a mortgaged property are located in a SFHA.

Moreover, both Fannie Mae and Freddie Mac require lenders who sell loans to them or service loans for them to warrant that the flood hazard status of the loans has been updated to reflect changes in FEMA flood maps and that flood insurance has been required where appropriate. Without the authority to impose flood insurance after closing, lenders will be unable to comply with the requirements of the secondary market, a major and growing factor in mortgage lending, except at great cost.

2. Current legislation, and all previous draft legislation, specifically prohibited waiving the flood insurance requirement for any reason. Our experience is that homeowners will seldom purchase flood insurance voluntarily and that if the flood insurance requirement becomes a "judgment call" much of the effect of the legislation will be diminished. We assume the omission the waiver prohibition from S. 1405 was an oversight and we urge that it be restored.

3. Among the major industry changes has been the growth of national and regional lenders. There are approximately 95,000 flood map panels, many of which may be updated in any given year, so that acquisition and maintenance of a current file of flood maps is a major undertaking the cost of which would surely be passed along to the consumer.

This has given rise to a growing industry of professional flood hazard determination firms which perform determinations on behalf of lenders at a modest fee—usually less than $15, by far the lowest item on the list of closing costs. Previous draft legislation permitted lenders to pass this reasonable fee along to borrowers notwithstanding any Federal, State, or local law. We believe that the restoration of this fee pass-along provision to S. 1405 will greatly improve compliance and accuracy.

4. No matter who performs the flood hazard determination, the lender is responsible for its accuracy. We agree with all previous draft legislation which protected both lenders and borrowers by requiring any third party performing flood hazard determinations to guarantee the accuracy of its work. Further, we believe that at a minimum these guarantees should include reimbursement for any uninsured flood loss or unnecessary flood insurance premiums paid due to an inaccurate determination.

5. S. 1405 includes penalties for non-compliance but has omitted the provision in previous draft legislation that these penalties do not rule out other causes for action. We believe that this is an important consumer protection issue and should be restored.

6. Similarly, there is no mention of when a lender must notify a mortgage applicant that the property is in a SFHA. Without notification prior to closing, the applicant does not have the opportunity to make an informed decision regarding a major purchase. Nor can the borrower obtain flood insurance, a condition of closing, prior to closing. Current guidelines specify notification at least 10 days prior to closing, or at time of commitment, whichever is earlier. These guidelines have worked well in the past and should be included in S. 1405.

7. Section 1364(e) requires participating communities to notify and warn homeowners and "known lenders" when individual properties are reclassified as in a SFHA on a new or revised flood map. This implies that the communities will be making the determinations. There are a number of questions to be raised in connection with this approach:

a. How will it be determined what source communities will use for flood hazard determinations? Will they use FEMA flood maps exclusively? How will this be regulated? Will there be penalties for using unofficial maps?

b. In accordance with the guarantee provision, will the community have to guarantee the accuracy of its determinations and reimburse the homeowner for an uninsured flood loss or unnecessary flood insurance premiums paid due to an inaccurate determination?

c. How will the community determine which lenders are active in their community? What about "unknown" lenders?

d. Since many lenders sell or transfer the servicing of their mortgage loans to firms located all over the Nation, and the servicer is responsible for updating, how will the communities know whom to notify?

In short, we believe this provision is unworkable and favor the "constructive notice" provision of previous draft legislation.

8. We also believe to be unworkable the provision that requires FEMA to review upon request all appeals of determinations that properties are located in a SFHA. Our experience shows, and the statistics bear out, that homeowners seldom purchase flood insurance willingly. We believe that FEMA will be inundated with appeals that will be both costly and time-consuming, even if FEMA is permitted to charge a fee for appeals.

Considering that as many as 1,000,000 mortgages are issued annually on properties in a SFHA, the entire NFIP program could become bogged down in the appeals process. We believe that an appeals process is essential, but we fear that in this instance the cure may be worse than the disease.

FEMA has recently published guidelines regarding the appeals process which we believe are adequate.

9. We believe that Section 205(e) which permits reliance on a previous determination less than five years old to be counter-productive. FEMA estimates that there is an average of 6,000 new and revised maps issued annually.

Inevitably, the change in flood status of many properties will be missed over a period of five years resulting in uninsured flood losses on properties in a SFHA, the situation the legislation is designed to eliminate.

We are confident that S. 1405, fine-tuned as above, will achieve the objective of Congress to create a self-sustaining National Flood Insurance Program that will protect lenders, homeowners, and taxpayers from the economic impact of disastrous floods.

Thank you for the opportunity to express our views.

TESTIMONY OF DR. PETER M. FALLON

North Beach Civic Association of Vero Beach, Florida

Mr. Chairman and Members of the subcommittee, my name is Peter Fallon and I represent the North Beach Civic Association of Vero Beach, Florida.

Thank you for the opportunity to tell you how this bill affects Florida.

We feel the NFIP has been a very successful program and agree that it needs some fine tuning. However, the thrust of its reform should address the 8.5 million structures in flood zones that are not currently insured but should be. The present Mississippi riverine flooding highlights this sorry fact.

If the average premium is $300 and all 11 million structures at risk were insured, the yearly premiums would total *3.3 billion dollars.* I submit no storm event would ever deplete this fund.

However, this bill does make improvements to enforce compliance and that's encouraging. It doesn't take a rocket scientist to see that by increasing the pool, we'll spread the risk and keep the program solvent.

Florida's policy holders comprise *43 percent* of the entire program, well over a *million* policies. We know and understand the value of flood insurance. Not only that, but *for every dollar paid out in claims, we have paid in $1222*! This has been an extraordinary return on a very good investment. It's a fact, that Florida's premiums have paid the claims for a large share of the other policy holders. To a great degree, Florida is the NFIP.

We have willingly paid out these premium dollars because it is an *insurance* program. Now, with S. 1405 we are shocked at the attempt to turn a viable and self-supporting insurance program into a Federally-backed land grab.

Make no mistake. If this bill is passed with its highly controversial and scientifically unreliable erosion zones, it will be a disaster for our tax base.

How can this be? Well, virtually all of Florida's coastal properties will be in the 30–60 year zone and because of their high real estate values they generate enormous tax revenues.

Legislation like S. 1405 that impacts the tax base resulting in the ultimate loss of a coastal property's insurability will cause a corresponding *loss* of the property's market value and ability to be mortgaged. This bill denies flood insurance to new construction and will cause the ultimate removal of insurance to existing structures in the 30–60 year zones, in which, I remind you, virtually *all* of Florida's coastal properties exist. This will cause their value to plummet, and with no market value, property assessments will also go south.

Florida is the original condominium State. This bill and its restrictions pose insurmountable problems for our condos. If one first or second floor owner receives the limit in claims and his flood insurance is denied, the entire master policy for the building will be cancelled. Without insurance, all FDIC mortgages will be called. Many retirees will suffer dearly, all because of these zones. Also, how does a condo comply with the regulations to elevate and be "readily movable" following storm damage?

It's interesting to note that our property appraiser, Mr. David Nolte, has determined that the coastal properties of Indian River County generate over *$48 million* dollars in tax revenues. This is over *43 percent* of our entire county budget. This money funds our *fire and police protection and constitutes 26 percent of our entire school budget.*

In our small county alone, he has estimated that the cost in lost tax dollars would have the same effect as a Hurricane Andrew *each and every year*! If this income is no longer generated, everyone on the Mainland will have to make up the difference. I submit that this bill far *exceeds* its intent if it ends up raising taxes on everyone who doesn't live on the coast.

Because Florida has the greatest amount of policyholders and an excellent, non repetitive claim record (unlike the riverine areas), we feel that the intrusion, no, the violation of our property rights by the Federal Government mapping these 30–60 year zones will guarantee significant and time delaying litigation.

Let's examine mapping the 30–60 year erosion zones. All coastal engineers agree on one thing: *that erosion is neither predictable nor standard.* Furthermore, it's proposed to use a baseline reference feature from which to measure erosion that's *not* even fixed. It makes no sense to use a physical landmark like a dune crest or vegetation line that's subject to shifting by wind or water.

We suggest that spending *25 million* dollars of our premium money on a mapping program that's not scientifically valid is wasteful.

Enter now the 30 year zone of erosion. Why 30 years and not 18 or 22 years? Because that's been the life of a traditional mortgage. Thirty years has no scientific basis as an erosion factor yet this bill is arbitrarily using that number and then doubling it to penalize virtually all of Florida's coastal tax base.

We see *no* place in a successful insurance program for such a land management intrusion, especially in Florida, the *leader* in coastal zone management and establishment of construction setbacks. In fact, our enforcement of coastal building standards have resulted in these structures experiencing 78 percent *less* damage than those not built to the same specifications.

Mr. Chairman, we heartily applaud:

- The new banking regulations to mandate compliance,
- The provision for the increased cost of construction,
- The increase in coverage amounts.

But we *strongly oppose* the arbitrary and scientifically unsubstantiated creation of erosion zones that will destroy property values, tax bases, and property rights of the hundreds of thousands of Americans living on our coasts.

In view of the current Mississippi flooding, the financial consequences of this proposed legislation cry out for further review and study.

We are very worried that if a storm doesn't get us, the government will. We urge you to not let the government do us more damage than a storm.

STATEMENT

National Association
OF
Professional
Insurance Agents

Before the Subcommittee on Housing and Urban Affairs
of the
Senate Banking, Housing and Urban Affairs Committee

on

"The National Flood Insurance Reform
Act of 1993"

September 14, 1993

NATIONAL

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Representing more than 180,000 independent insurance agents, brokers and their employees

Mr. Chairman and Members of the committee, the National Association of Professional Insurance Agents is one of the largest national trade associations representing independent insurance agents, brokers, and their employees throughout the United States.

PIA National members own and operate their own agencies. PIA members sell and service all kinds of insurance, specializing in coverage for autos, homes and businesses. As independent business people, PIA members can provide consumers with coverage from several insurance companies.

PIA National is a member of the Flood Insurance Producers National Committee (FIPNC) which is composed of independent agents from PIA, the National Association of Casualty and Surety Agents (NACSA) and the Independent Insurance Agents of America (IIAA).

Mr. Chairman, we commend you for introducing and conducting this hearing on S. 1405, "The National Flood Insurance Reform Act of 1993." This measure certainly sets a new precedent as the most extensive overhaul of the National Flood Insurance Program since 1973. It also is the first measure ever to include substantive penalty language to the regulatory requirements.

GREATER COMPLIANCE WITH FLOOD INSURANCE MANDATORY PURCHASE REQUIREMENTS

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. Unfortunately, despite the availability of the insurance, after major flooding disasters in 1972, it became evident that relatively few flood victims had purchased flood insurance. From the standpoint of the Federal Government, the question has not been whether the Federal Government would be called upon to provide relief, but rather, through what mechanism would Federal funds be made available.

There are two very important provisions of the 1973 Act that set the debate for review of the National Flood Insurance Program. First, the Act required the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance from any Federal office or agency for acquisition or construction purposes with respect to any building or mobile home located in any area that has been identified as a special flood hazard area, within any community participating in the National Flood Insurance Program. Secondly, the Act required Federal Financial Regulatory Agencies or Federal Instrumentalities to direct lenders subject to their regulatory jurisdiction to require borrowers, whose security consists of buildings or mobile homes located in a special flood hazard area in a participating community, to purchase flood insurance.

Although we agent groups have not conducted research to determine the exact percentage of non-compliance within the lending institution of property portfolios, we do know it exists. That is why we are so very pleased with Title II of S. 1405, the section entitled Compliance and Increased Participation.

We have always shared the view that greater compliance with flood insurance mandatory purchase requirements should apply to lending institutions insured or regulated by the Federal Government and should include the secondary market. With a majority of mortgages being sold or resold to the secondary market, this is an area where we are seeing real challenges to the compliance requirements. Again, we are very pleased to see that these provisions are dealt with in the language of Title II, section 204.

Without a doubt, the major weakness of every comprehensive flood insurance measure has been the lack of stringent civil and criminal penalties or liabilities for non-compliance. PIA National has worked for many years to add these types of provisions to flood insurance reform proposals, and we support the imposition of civil penalties contained in section 207 of Title II. Not only are these provisions imperative to a successful flood insurance program, but the oversight of these compliance requirements are also vitally important.

In reviewing the language on compliance in S. 1405, we think it is imperative to raise our concerns with compliance language contained in two bills introduced on August 4, 1993, by Senator Inouye (D–HI), as S. 1350, and in the House by Representative Mineta (D–CA), as H.R. 2873, entitled the "Natural Disaster Protection Act of 1993." In it, the responsibility for enforcing the mandatory purchase requirements—which currently rests with the regulatory agencies supervising the lending institutions—would shift onto the shoulders of independent insurance agents and brokers. It is our belief that this language has clearly not been thought out, and would impose requirements on an industry who clearly has no direct financial interest. Through our involvement with FIPNC, we raised these concerns, and are currently working to amend this specific legislative language.

Another area which concerns us is the issue of waiving the flood insurance requirement. Recent proposed legislation specifically prohibits this practice for any reason. We agree with this policy, and think it should be included in S. 1405. While the argument can be made that laws cannot be waived, in the lending community, it is not uncommon to waive required insurance coverages such as Collateral Protection for consumer loans. By doing this, the lender has assumed the risk through self-insurance. This is not an option for flood insurance, nor has it ever been. It is PIA's belief that we need a legislative clarification of this problem for lenders.

NOTICE REQUIREMENTS/SUGGESTED LANGUAGE

A more important decision under S. 1405 is really not whose responsibility it is to notify borrowers (because the Flood Disaster Protection Act of 1973 specifically places it on lenders) but on why there is minimum compliance to the mandatory purchase requirement.

PIA has always recommended that all lenders in addition to informing clients up front about the need for flood insurance, also use language in their settlement procedures and papers which allow them review and adjustments in the future on secured properties. A large number of lenders' closing material specifically state that the property in question is not in a floodplain/zone and does not require flood insurance coverage. Such definitive statements may very well cause problems for lenders in the portfolio reviews both in terms of passing the costs on to the borrower in question and subsequently placing an additional condition on said borrower for the property in question (a condition which is in conflict with the specific language of the loan papers).

Here is sample language that would provide the lender with more flexibility and the borrower more clarity:

> *At this time you have been advised that your property is not in a Special Flood Hazard Area (SFHA). Therefore, you will not be required to secure a flood insurance policy as a condition of your loan. However, as a regular practice, this lending institution conducts periodic reviews of its loan portfolio book to determine if any errors in property/hazard assessments/evaluations have been made and/or if any conditions relative to the property's interests have changed. Such cost of review, should your property be included, will be charged to your escrow account. Further, should conditions relative to the insurance requirements of this loan change, you will be notified* x *number of days from the date of portfolio review; the changed conditions shall be specified with instructions as to how these conditions can be met, and a period of* x *number of days will be given to you in order to comply.*

Such language allows the initially misrated property to be picked-up and allows properties which at origination, were properly rated but because of community action may now have a flood exposure, to also be applied.

For the mutual benefit of lenders and insurance agents, PIA recommends that lenders should have the same account number for the borrower's loan in all insurance policies that are required by that lender.

INCREASED HAZARD MITIGATION AND EROSION MANAGEMENT

PIA fully supports the termination of the erosion-threatened structure program or the so-called "Upton-Jones Amendment." We have always supported Representatives Upton and Jones in their efforts to achieve pro-active and effective floodplain management, rather than relying solely on municipal action which in the past has been defective. They have attempted to provide the incentives directly in the hands of individual property owners. While we encourage the Federal Government to become more involved in pre-flood damage reduction measures, we are glad to see the drafters of S. 1405 realized that the program is unworkable and has not accomplished its goal of relocation. NFIP statistics show that nationwide, homeowners chose demolition rather than relocation. There is also a significant risk of fraud with the Upton-Jones. The provision is not insurance per se. Those that buy a flood policy for the coverage are in fact people who will need to use it. Insurance is a transfer and protection for the potential loss, not a known and impending one.

COMMUNITY RATING SYSTEM

PIA is pleased to see the inclusion of the Community Rating System (CRS) in S. 1405. CRS is a unique Federal-State initiative which provides greater protection against flooding while reducing flood insurance premiums for policyholders. It is a major tool in NFIP's goal of actuarial soundness. Flood insurance rates will more accurately reflect the risk of flood damage to individual buildings. The CRS community classification reflects the flood loss potential of communities and by increasing the number of policies in force, the risk will be spread among a larger population. Overall, floodplain management on a national basis would be improved.

DENIAL OF FLOOD INSURANCE; CHARGING FOR REPETITIVE LOSSES

As we've stated earlier, PIA strongly supports strong mitigation measures. The proposed Section 1314 provides that no flood insurance will be available within a 30-year erosion hazard area with respect to any new construction or addition to an existing structure, if the addition makes the structure not readily movable. It also provides that no flood insurance is made available to properties located within the 60-year erosion hazard area and outside the 30-year erosion hazard area with respect to any new nonresidential structure; residential structure that is not readily movable, or addition to an existing structure, if the addition makes the structure not readily movable. These 30-year and 60-year erosion hazard areas are to be established by the FEMA Director.

PIA totally agrees that structures should not be built on designated "high risk" *undeveloped areas. However, the Federal Government should realize that they are partly responsible for those existing properties now situated in coastal/high-risk areas.* Some arrangements should be made that will allow fair treatment of these property owners. Flat denial of flood insurance, we think, will not work. A transitional solution should be devised for coastal property owners.

This issue also applies to repetitive losses. Using the premium rate structure to "penalize" those property owners having repetitive losses could be a solution. However, PIA believes that a more realistic solution would be to raise these structures (floodproofing) to prevent future losses. As what happens a lot of times, people are not discouraged to build and/or improve their properties by the mere imposition of higher premiums.

INCREASED INSURANCE COVERAGE TO REFLECT PRESENT TIME

PIA is glad to see the provision increasing the maximum insurance coverage which we have been proposing for several years now. Given the real estate market conditions, $250,000 is reasonable compared to the $185,000 we currently have for single-family building coverage. The $250,000 multiplied by the number of dwelling units in the building would open up new markets. While NFIP's liability exposure is correspondingly increased, charging the appropriate amount of premium application would deter the fear of draining the NFIP fund.

MISCELLANEOUS PROVISIONS

No Binding Authority Under NFIP

One of the areas not addressed by S. 1405 is the inability of the insured to secure and present a flood insurance policy at the closing date/activities of a loan at the original purchase date. Particularly when a housing market is extremely active, the turnaround time between when the property is inspected, the potential purchaser is notified of the insurances required to meet the loan obligations, and the actual closing date/signing of the papers does not allow the full insurance process, particularly the information gathering that is required by the flood insurance policy to occur. Additionally, even in the initial stages of securing a loan, a mortgage can turnover either completely to another lender or be split into a servicing/debt component and be shared by two entities.

In the traditional property area, these time constraints, while increasingly difficult to meet, have been handled principally because insurance agents (particularly independent insurance agents) have the ability to bind property insurance coverages. Further, most of these insurance producers have the ability to issue the actual policy in their offices. Lastly, the rating information needed for homeowners is a great deal more doable to secure and calculate in the insurance agent's office. None of these factors are available to the insurance producer relative to flood insurance policies. Further, a great deal of controversy still surrounds the issue of lenders accepting validly and legally-issued insurance binders for general property insurance requirements for the loan.

Flood Map Updates; Interagency Task Force

The language provision to update flood maps every 5 years is reasonable. However, it is very important for agents to be advised of these changes. Present practice is for FEMA/FIA to provide copies of Letters of Map Amendments (LOMA) and Letters of Map Revisions (LOMR) only to property owners. This is a big area of E&O exposure to agents.

PIA welcomes the formation of the Interagency Task Force. It is highly important that agencies involved be well-coordinated specifically in issuing deadlines and/or effective dates with those involved in issuing flood maps. The cornerstone of the NFIP is the identification and mapping of flood areas around the country. The maps are critical to both the mitigation and insurance portions of the NFIP.

CONCLUSION

PIA reiterates that apart from the marketing condition, insurance agents have no financial interest in lenders' compliance under the National Flood Insurance Program. The only parties having financial interest are the property owners/borrowers, the lenders and in the case of the NFIP, the Federal Government.

We appreciate the opportunity to comment before your subcommittee.

COMMENTS OF C.M. (BUD) SCHAUERTE

CLEARWATER BEACH ASSOCIATION, CLEARWATER BEACH, FLORIDA

Thank you for the opportunity to comment upon S. 1405, known as the "National Flood Insurance Reform Act of 1993." My name is C.M. (Bud) Schauerte and I am pleased to represent the six-hundred members of the Clearwater Beach Association who own and occupy homes and small businesses on Florida's west coast. The Association is convinced that certain provisions of Title IV under S. 1405, if enacted into law, would adversely impact Florida homeowners and small businesses more severely than any State or territory which participates in the National Flood Insurance Program (NFIP). With more than one million flood insurance policies in force, Florida residents hold 40 percent of all NFIP insurance coverage.

The provisions in S. 1405 relating to mandatory flood insurance purchase, enforcement of community construction codes, and the statutory enactment of the Community Rating System, are important and beneficial refinements of the NFIP which, this year, is observing the Silver Anniversary of its enactment. It is noteworthy to add that during the last ten years the NFIP has enjoyed the status of a *self-sustaining, non-taxpayer funded Federal insurance program*. Taxpayers *do not* subsidize any aspect of its operations.

But the enactment of Title IV provisions is a different story. Title IV, if it becomes law, would selectively deny flood insurance and thereby devalue homes and real estate on all the Nation's coastlines. With its 1400 miles of coastlines, insurance denial would have a powerful negative impact on Florida. Title IV also would restrict or deny the freedom to build or rebuild homes and small businesses on privately owned land. While the insurance and construction denials dominate the concerns of Clearwater Beach Association members, they also worry that Title IV's community grants and spending mandates will undermine the financial integrity of the NFIP.

This legislation calls for a raid on NFIP policyholder reserves of millions of dollars annually to be used as mitigation grants to States and communities, for questionable erosion surveys along 84,240 miles of the Nation's coastlines, and for policyholder-paid mitigation planning grants. The legislation is less than specific as to how erosion studies will benefit NFIP policyholders.

A conservative estimate of these annual expenses is $100 to $150 million. This would be the NFIP's liability *before* a single flood damage claim is paid. I feel obliged to reiterate that the dollars which will flow from this legislation are those paid to the NFIP as flood insurance premiums and *not* taxpayer funds. They are dollars which should be used to pay flood damage claims sustained by policyholders and certainly not for capital improvement projects among the more than 18,000 communities participating in the NFIP.

THE GROWING FINANCIAL BURDEN ON POLICYHOLDERS

Since 1968, when the NFIP was created, the program has developed into a highly sophisticated insurance entity. It is one of the rare Federal programs which is self-sustaining. Since 1984 the NFIP has not cost American taxpayers a single penny either in claim payments risk assessment, or administrative costs. What is more, it is estimated that the NFIP has saved taxpayers more than $4 billion in disaster assistance payments because policyholders, who are indemnified for their flood losses, are ineligible for taxpayer-funded disaster assistance payments.

American taxpayers can be grateful to NFIP policyholders. With the payment of their insurance premiums, NFIP policyholders bear 100 percent of the program's ever-increasing financial burden. The increasing dollars required to be insured are causing many insureds to believe that NFIP policies are already unaffordable. Now we are faced with the prospect of what could be a crushing financial burden on policyholders. Grants and erosion studies, called for in S. 1405, most certainly will drain the NFIP funds which more properly should go toward the payment of flood damage claims. Homeowners can expect rising premium rates because of grant money and program expenses.

If nothing else, the flooding tragedies of the past 10 months—including the Midwest floods—have proven that policyholder reserves are finite. Deficits have plagued the NFIP fund already this year and could require many months of catastrophe-free experience for it to be replenished. The NFIP's historic $600 million in claim payments last year was seen as a reason to bring about flood insurance "reform" and reduce the liabilities of the program. But the goal of "reform" seems to be inspired by the illusion that: "spending is saving."

This legislation requires an estimated $100 million in policyholder grants for community planning assistance, mitigation grants, and erosion studies over more than 84,000 miles of U.S. shorelines. On top of this is a scheme (Sec. 403) to apply the ill-conceived and actuarially unsound Upton-Jones benefits (Sec. 1362 of current law) involving financially prohibitive structure relocation and demolition to all insureds located in designated coastal erosion zones. This scheme is a total contradiction of sound insurance principles which serve the NFIP so effectively and which has made it a financially successful insurance program. The Upton-Jones provision pays for damages which have not yet occurred and has hemorrhaged the fund of millions in redundant expenses not related to insurance. Experience has shown that Upton-Jones claims are three to six times the national average of NFIP flood insurance claims.

With its virtual monopoly on flood insurance, it is arrogant and contemptuous of the Federal Government to encumber 2.6 million policyholders with flood and erosion mitigation costs in all States and U.S. territories and then proclaim that the maneuver will reduce the liabilities of the program and the premiums of the insureds.

Acquiring insurance at almost any price can be a vexing proposition unless potential buyers clearly understand the risks they could be taking by "going bare" and living without insurance protection. It is an irony that while Title II of S. 1405 encourages and mandates increased participation in the NFIP, Title IV of the bill denies insurance coverage in certain erosion zones deemed to be hazardous.

In all fairness, S. 1405 is considerably modified from earlier discussion drafts of the legislation which were patently onerous to property owners. Nevertheless, this legislation signals the introduction of Federal land use control into the NFIP. It shifts the emphasis of the NFIP away from mature insurance underwriting and loss reduction operations to Federal Government dominance over private property utilization . . . a responsibility more correctly accomplished through State and local government entities.

S. 1405 WOULD DEVALUE HOMEOWNER'S PROPERTY

The availability of affordable flood insurance is a good investment because the coverage not only protects residences and small business structures against flood damage losses but the insurance helps to retain the value and marketability of the structure and land to future generations.

The passage of S. 1405, in its present form, will confront thousands of homeowners and small businesses, especially those in Florida, with a painful uncertainty regarding the future values of their homes and the places where they make their livelihoods. The legislation calls for flood insurance denial on new construction and additions to existing buildings unless the addition is "movable." A further Federal intrusion into personal property rights, called for in S. 1405, is the limitation of floor space to "less than 5,000 square feet" which, in effect, is a government-mandated specification in the construction of an individual's "movable" building.

Existing residential properties and thousands of small business structures, including tourist shops and restaurants, and which already are subject to stringent NFIP construction standards, would be prohibited from acquiring NFIP flood insurance by an impersonal Federal agency in Washington D.C.

It has been explained in literature accompanying S. 1405 that some 19 States and U.S. territories already regulate development in areas subject to erosion and that "widespread land devaluation has not occurred as a result of these programs." The literature goes on to say that six States "have shown that good coastal and floodplain management enhance land values throughout the community, not just on the waterfront."

The 19 States and U.S. territories which regulate land development within their boundaries is a reflection of the wishes of those who reside in these areas. Their obvious concerns regarding sound and environmentally responsible use of beach front properties is embodied in laws which relate to the particular interests of those living there. State laws governing such provisions as erosion setbacks, wetlands protection, wildlife habitat preservation, and public recreation imitate the preferences of voters. And if there are 19 States and territories with such broad restrictions on land development *then it must follow that there are more than 30 States and territories where residents prefer less severe or no restrictions at all on land development.*

The argument that State and local land management programs have not resulted in devaluation of private property does not take into account that States and local communities do not hold the penalty of flood insurance denial over the heads of landowners as does the Federal Government. State laws controlling land use are sensitive to the desires of those who make their homes in the State. And when residents consider such laws to be offensive and not in their best interests, they bring about changes through their elected representatives. A case in point is Folly Beach, South Carolina.

When Hurricane Hugo ravaged South Carolina in the fall of 1989, most of the homes on Folly Beach were demolished or severely damaged by the wind and rain which accompanied the storm. So severe was the damage that Members of the State Legislature were inspired by environmentalists and others to pass legislation which denied rebuilding of the beach front properties and allow the area to return to its natural state. Folly Beach homeowners, and others who feared the State was intruding on their private property rights, objected instantly and vehemently. And it was not long before the restrictions were repealed.

The incident at Folly Beach after Hurricane Hugo underscores the importance of State and local government control over private property rights. State legislatures are more responsive and likely to repeal or amend laws which are offensive to constituents than is the Federal Government. And so the broadening of provisions in S. 1405 in future sessions of Congress, to satisfy the environmentalists' agenda, is more likely to occur than the moderating of odious provisions which are financially harmful to homeowners in a particular State.

MITIGATION GRANTS WILL NOT REDUCE PROGRAM COSTS

Reducing repetitive flood damage losses is a noble objective for the NFIP which has been eminently successful in this effort. In his testimony June 24, 1993 before the House of Representatives Subcommittee on Consumer Credit and Insurance, Mr. Francis V. Reilly, Deputy Federal Insurance Administrator, described the program's successful experience in loss reduction programs.

Mr. Reilly's comments are best understood when quoted in full rather to paraphrase:

> *Since 1975, over 2 million structures have been built in the identified special flood hazard areas following community of NFIP building standards. These structures are 77 percent LESS LIKELY* (emphasis by Mr. Reilly) *to suffer damage than those constructed prior to community participation. Taking into account both the frequency and severity of damage, these structures suffer 83 percent less damage than existing construction. The historical reduction in flood damage is estimated at $569 million annually.*
>
> *According to a 1988 report by Dr. Raymond J. Burby, professor of City and Regional Planning at the University of North Carolina, NFIP floodplain management regulations have, in 10 communities studied, diverted 78 percent of potential, and 90 percent of commercial development, away from the floodplain. Dr. Burby went on to specify that the savings from the NFIP's flood activities equalled $11 million per year in those 10 communities.*

It would be difficult to discover more impressive statistics on flood insurance loss reduction activities. It should be noted that the loss reduction program, as described by Mr. Reilly, was accomplished through existing NFIP construction standards and with the cooperation of NFIP community participants and without the need of the NFIP to fund individual and community-wide capital improvements to reduce losses.

It is a strain on one's imagination to understand how $20 million in annual grants of policyholder funds for flood and erosion mitigation projects, as called for in S. 1405, could have even a minimal impact on reducing future flood losses and improve the financial soundness of the NFIP. Explanatory literature, accompanying the legislation, explains that the mitigation funds initially will "concentrate on approximately 40 communities in 6 States that constitute NFIP's loss leaders." Selecting the beneficiaries of the largesse, it seems, will be an arbitrary decision by someone in the Federal Government and that selections already have been made. Such caprice is bound to draw the NFIP into a controversy with hundreds of communities in other States who feel they are the victims of discrimination in the awarding of the proposed grants.

Whatever the amount of mitigation assistance planned to be awarded to Florida (if any), the grants will be minuscule as compared with Floridians share of premium payments which will be used as grant money. Florida's 1,400 miles of coastlines, its lakes, and its riverines cause it to be the most flood and erosion prone State in the

Nation. If directed solely at Florida, the $20 million (or even quadruple that amount) for capital improvements would have demure effects on loss reduction. *It is easy to believe that the $20 million would have greater "pork barrel" benefits for elected officials than the mitigation benefits to property owners.*

WHY NOT EROSION INSURANCE?

Clearly, erosion and the threat of erosion on real property and construction plays a significant role in addressing flood hazards and the indemnification of flood insurance losses. The Upton-Jones provision, established in 1988, provides benefits from the NFIP policyholder reserves to structures threatened with imminent collapse due to erosion. S. 1405 calls for extensive erosion studies and mapping along 84,240 miles of national shorelines and directs that further studies be conducted to determine the feasibility of identifying and establishing riverine erosion hazards.

Erosion, like flooding, is an insurance risk or peril which could result in personal financial loss and for which an insurance contract would provide protection. Private sector insurers do not underwrite erosion insurance because technically accurate and up-to-date maps, which identify erosion prone coastal and riverine areas, generally are non-existent. Land management strategies in some coastal communities regularly assess environmental erosion and accretion within their jurisdiction. But the techniques in determining erosion/accretion are sketchy and inconsistent and therefore not completely valid in the setting of erosion insurance rates.

Although S. 1405 requires that erosion (there is no mention of accretion) surveys be performed along the Nation's coastlines, the legislation is less than specific on how these extensive and expensive studies will benefit policyholders who will pay for them. Instead, according to Sec. 403 (Pg. 32 and 34) the identification of erosion prone areas will determine the eligibility of communities for mitigation grants and individual benefits (similar to those provided by the Upton-Jones provision) from which policyholders generally will not benefit.

The effect of erosion mitigation grants is for the NFIP to underwrite the erosion risk—a legitimate insurance peril—but without collecting an actuarially-rated premium from those who will benefit. The financial implications of such a program inevitably will undermine the fiscal soundness of the NFIP and shift its financial burden from policyholders to taxpayers. Erosion mitigation grants in this legislation is a reaffirmation of the "something for nothing" philosophy which has helped to create our country's enormous deficit problem.

S. 1405 EFFECTS ON FLORIDA AND COASTAL STATES

The State of Florida and others with coastlines, including Texas, Louisiana, California, and Michigan, will bear the brunt of S. 1405 provisions relating to insurance denial and Federal land use control measures. (The tourist industry in the tiny State of Delaware will sustain a crushing hit).

Homes in dozens of Florida communities, as well as those in tourist communities in New England, have existed for many generations and long before the creation of the NFIP. These communities include families of modest income as well as people of wealth. Homes which were at one time characterized as "vacation homes" now are permanent residences of retirees and young families who escaped the congestion of large metropolitan areas.

Residents there form the commercial base of the community. They purchase necessities, pay taxes, and participate in home town activities. Their property and sales taxes pay the salaries of teachers, municipal employees, and fund the pensions of police and firemen. Taxpayers and community officials have a mutual dependency on one another.

Now, most of these communities are threatened with S. 1405, and the inevitable future broadening of this legislation, which would deny flood insurance, restrict building and rebuilding and diminish the tax base in hundreds of urban and suburban areas. With more coastline than any other State, Florida has more floodplains and potential erosion areas than any other State. S. 1405 would deny more flood insurance coverage and control more private property than in any other State. What is more, Florida's share of policyholder premiums used for mitigation grants to other States would be far greater than what it might receive in such grants.

SUMMARY

The denial of flood insurance and the intrusion of Federal land control, embodied in S. 1405, would result in the devaluation of private property located in floodplains and so-called "erosion zones."

The enormity of capital improvement projects in more than 18,000 NFIP communities is no match for the policyholder funds available in the form of mitigation grants. Communities have an enlightened self-interest in developing flood and erosion management plans and should not depend upon NFIP policyholder grants to develop land management programs.

Expensive and extensive coastal erosion surveys are most effective when coupled with actuarially-rated erosion insurance for which an insurance premium is paid. Contrary to professional insurance principles, S. 1405 requires flood insurance reserves to pay claims for erosion damage which is a separate insurance risk.

Under S. 1405, actuarially-unsound Upton-Jones benefits, would be applied to all insureds protected with flood insurance. The benefits are three to six times greater than the national average flood insurance claim and would rapidly deplete the NFIP policyholder funds.

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CIVIL & CRIMINAL JURISPRUDENCE
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TRANSPORTATION & TOURISM

September 13, 1993

VIA FACSIMILE AND REGULAR MAIL

The Honorable Christopher S. Bond
United States Senator
293 Russell Office Building
Washington, D.C. 20510

Re: National Flood Insurance Program

Dear Senator:

As the Congress considers floodplain policy in light of the recent flooding in the Midwest, there are several things that I hope you will keep in mind. The entire floodplain management scheme devised by the federal government was intended to discourage development in the floodplain areas and to decrease the number of people living in those areas that are subject to flooding. As we know from the national media's coverage of the flood, there are actually more people now living in floodplain areas than at the time the program went into effect. Like many federal programs, though well intentioned, it has had some unforeseen impacts and consequences.

Before the federal government got into floodplain management, there were three groups of people in the floodplain. The first of these were people living in old, established towns such as Portage des Sioux, West Alton, and Orchard Farm. These communities were built during the period when the flooding was not nearly as frequent, nor as severe, as we have experienced in the last 50 years. Portage des Sioux is the best example of such a town. It was founded in the late 18th century, built on the highest ground in the area. It never flooded until the flood of 1993. The second group in the floodplain was the farmers who found it necessary to have their farm buildings and homes close to their fields in order to make a decent living upon the fertile land of the floodplain. The third group in the St. Charles County floodplain was private individuals who built club houses along Alton Lake after the Alton Dam was completed in the early 1940's.

The farmers built their homes on ridges and assumed from the beginning that they would encounter floods, but only every 40 or 50 years. The people who built the club houses knew that they would be flooded often and, therefore, built the houses of cheap materials and often elevated them so as to minimize flood damages.

When the federal government decided to insure these club house structures, people quit using them as club houses. To be eligible for flood insurance, these structures had to be occupied as a full-time residence. Therefore, they were abandoned as club houses, rented out, and became low income housing. The net result was to have additional people moving into the floodplain areas.

With regard to the farmers, while they never asked for the federal intervention in the first place, they were now faced with extensive land use regulations which greatly devalued their property and hampered their ability to farm their property. The most recent example of this was the doing away with the "agricultural exemption" by the Missouri General Assembly in 1990. This change, at the insistence of the Federal Emergency Management Agency, meant that farmers now would have to elevate not only their homes, but also their farm structures in the event that they were more than 50 percent destroyed by any flood. The overall result is that the flood insurance program has failed to achieve its purposes and has, in the process, created a great deal of animosity against the federal government's intervention in land use decisions for St. Charles County.

Given the above facts, it is not surprising that people would object to the fact that the flood insurance program treats all the various groups listed above in the same way. This means that the farmer or townspeople who had his house flooded for the very first time in 1993 are treated the same as the person whose home is subject to flooding damage every four or five years. While the latter is collecting frequent checks from the federal government, the former feel the brunt of the regulation. This was never more apparent that under the present flood conditions when people who have never had flooding in their home before, are now being forced out, or forced to rebuild their home above the 100-year floodplain.

The result of the existing policy will mean that agriculture will be greatly hindered in this area and historic towns like Portage des Sioux may be severely depopulated to the extent that any sense of "community" will be totally destroyed and institutions that have been in place for over a hundred years will no longer function.

For this reason, we are asking that the policy be changed to take into consideration repetitive loss as a factor in determining whether structures will be rebuilt or torn down. Structures that have made numerous claims already, and which the federal government has subsidized for years, obviously should not continue to be rebuilt and become a further burden on the federal treasury. However, the people who have a good reason to live in the floodplain, or who have made few claims until the flood of 1993, should not be penalized because the 500-year flood happened to come during their lifetime. As elected officials whose districts are more than 50 percent floodplain, we implore you to reconsider the present policy and grant some relief to those of our constituents whose lives and livelihood depend upon them being able to return to their homes in the floodplain.

Sincerely yours,

Steve Ehlman

Steve Ehlmann
State Senator
District 23

Joe Ortwerth

Joe Ortwerth
State Representative
District 17

SEE/vh

MEMO

DATE: September 13, 1993

TO: [redacted] Housing and Banking Sub-Committee

FROM: Clyde P. Angle
802 Southern Air Drive
Jefferson City, Missouri 65109
(314) 634-2500 (office)
(314) 635-2755 (home)

RE: National Flood Insurance Reform Act of 1993 (S. 1405)

Dear Committee Members:

I wish to express my support for S. 1405 and any other attempts to strengthen and expand the current mandatory flood insurance requirements. I strongly believe the lenders are in the best position to alert the consumer that he or she is in a flood plain and thus required to purchase insurance prior to obtaining a mortgage loan.

I believe that local communities must be made to institute and enforce local ordinances that prohibit the building in a flood plain without obtaining a "variance." If properly enacted and enforced I believe these ordinances will ensure future loss can be avoided or mitigated. If a "variance" cannot be obtained then most likely the home or business should not be built in that location.

I also agree with the requirement for escrowing the flood insurance payments. This would certainly solve the problem of the consumer terminating coverage. I would also urge a "notice" provision so that as the mortgage debt is paid down the borrower is put on notice to continue insurance. The failure of which would prevent that person from receiving state or federal aid, grants, and or assistance in the future. I strongly believe if the consumer does not want to buy insurance to protect themselves then the federal government and the taxpayer should not have to bear the financial burden. I know there may be some hardship cases, i.e., "lack of notice" etc. and I am sure there would be ways to handle them.

Additionally, I would recommend that all communities participating in the programs be required to give written notice to all homeowners currently in the flood plain, both 100 year and 500 year. I have been very surprised at how many people are in those flood plains and do not or did not know they were.

It appears that many of the insurance agents selling "flood" insurance do not have the knowledge or experience as to either the coverage amounts, types and/or the program. A lot of problems could be avoided if there were some standardization of information.

Several people have told me their agent gave them conflicting information as to amount of and type of insurance available. In at least one case the agent said the person did not need flood insurance. In another case the agent sold "contents" coverage when such coverage was not available. In still yet another case there were conflicts as to what is a "basement" in regards to whether or not contents could be covered.

In summary, I would encourage expanding S. 1405 to clearly place the burden on the consumer once the debt or the loan is paid down. There must be a "penalty" for not carrying flood insurance. This bill clearly takes care of those homes where debt is large enough to cover a loss. However, as the debt is paid off the flood risk is still there. If the consumer is not carrying the insurance as is necessary then. The public and our government should NOT carry the burden for someone who: (1) knows they are in a flood plain and (2) fails to continue insurance coverage after a loan is paid down/off.

If a person wants to assume the risk they should be allowed to and therefore should be prohibited form any state/federal grant or aid in relationship to a flood loss. The government should spend its financial resources on those taxpayers who did not have the opportunity to insure an unseen loss. I can't think of any greater incentive than that to insure a person carry insurance.

I hope these short comments are helpful to the Committee.

National Association of Home Builders

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Tommy Thompson
First Vice President

Reply to:
Thompson Homes, Inc.
P O. Box 430
Owensboro, KY 42302

September 21, 1993

The Honorable John F. Kerry
421 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Kerry:

The National Association of Home Builders respectfully requests that this letter be entered into the hearing record on S. 1405, the National Flood Insurance Reform Act held by the Senate Subcommittee on Housing and Urban Development on September 14th and 15th. As you know, I testified at this hearing over which you presided.

Following my testimony on S. 1405, you questioned NAHB's opposition to Title IV, section 406 of S. 1405. NAHB opposes this section of the bill which would deny flood insurance, through the National Flood Insurance Program (NFIP), in "erosion hazard areas" for new structures seaward of a 30-year erosion zone and for new structures or additions to existing structures not "readily moveable" between the 30- and 60 - year erosion zones. You raised the concern that the Federal government should not subsidize flood insurance for new structures built in erosion zones because of the consequential threat to the NFIP's solvency. However, this concern appears to be based on the premise that all structures insured through the NFIP are subsidized. This is not the case.

I responded to your inquiring by noting that new structures built within the erosion areas as designated by S. 1405 would not be subsidized but would be insured at full risk premium rates. This statement is supported by Federal Emergency Management Agency (FEMA) documents. According to FEMA, subsidized insurance is provided to NFIP policy holders that insure buildings constructed prior to the publication of FIA's Flood Insurance Rate Map (FIRM). However, insurance is currently provided for new construction at full risk premium rates. The same FEMA document defines "new construction" by statutory prescription as "any property, the construction or substantial improvement of which has been started after December 31, 1974, or the effective date of the community's initial FIRM (for the area in which such property is located), whichever is later."

"Housing Makes a Difference"

As further argument in favor of denying flood insurance coverage for certain structures within "erosion hazard areas", you alluded to a common perception that the greatest percentage of repetitive losses to the NFIP are from coastal states. This is not completely accurate. While the states responsible for the largest percentage of repetitive claims are first, Louisiana, and second, Texas, which are coastal states, the majority of claims within those states are from riverine areas, not coastal areas. Again, according to FEMA statistics, "Repetitive losses are primarily riverine and stormwater, even in coastal communities. With the recent Nor'easters that affected Massachusetts and New Jersey, the amount of coastal repetitive losses has increased, but again, most are riverine or stormwater. Percentages are not available."

NAHB urges you to revise section 406 to make flood insurance available for all structures. We believe that section 406, as currently written, contradicts the very public policy purpose driving the Flood Insurance Program and Title II of the legislation, which is to increase participation in the NFIP. Sec. 406, with its varying policies on the type of structures eligible for coverage, coupled with the ever changing nature of erosion zones, will be a bureaucratic nightmare to administer.

Indeed, FEMA's opposition to section 406 is consistent with the position of NAHB. As FEMA testified before the Banking Subcommittee on Housing and Urban Affairs on September 15, 1993, it is concerned about the provision that would deny insurance in identified erosion hazard areas. As FEMA notes:

> We believe the strength of the NFIP has always been the leverage in the agreement between the participating communities and the Federal government that communities would enforce sound land use management in exchange for the availability of flood insurance. Actuarial premiums charged in these areas, coupled with a stronger mandatory purchase provision will help discourage unwise development. While insurance denial may seem to be the simplest was to discourage development in these environmentally sensitive areas, we question how effective a deterrent this really is.

Again, we urge members of the Senate Banking Committee to incorporate our recommendations before the bill advances.

Sincerely,

Thomas N. "Tommy" Thompson
NAHB President-elect

cc: Senator Alfonse D'Amato
Senator Carol Moseley-Braun

STATEMENT OF GERARD STODDARD

CHAIRMAN, THE LONG ISLAND COASTAL ALLIANCE

The Long Island Coastal Alliance, founded in 1989, comprises individual property owners, coastal property owner organizations and coastal villages dedicated to economically and environmentally sound and equitable coastal management. Needless to say, coastal property owners throughout the country have a strong interest in improving the National Flood Insurance Program (NFIP). S. 1405, if amended as indicated in this statement, can be the engine to accomplish the needed change.

WITHHOLDING INSURANCE FOR NEW CONSTRUCTION

Section 406 of the bill would deny flood insurance for new construction in erosion hazard areas. This would be a mistake. The NFIP was created to *provide* insurance to property in floodplains, if those properties were developed in accordance with sound construction principles for flood prone areas. *Denial* of insurance controverts the basic idea of the program. Although intended to discourage use of certain properties, the provision is more likely to result in *improper* use, while reducing the number of properties contributing to the NFIP reserve fund. It is, in any case, improper for the Federal Government to supplant coastal communities' control over local land use decisions. The incentives provided for elsewhere in the bill are appropriate; federal dictates are not.

While loss of premium income should be reason enough to reject this provision, the impact on coastal communities' ability to maximize real estate tax revenues is equally significant. Tax revenues will decline as appraised values reflect the restricted use to which the property can be put. Coastal communities frequently provide up to 60 percent of their county's real property tax base. This supports the county schools, highways, libraries and other services. To the extent the properties are seasonally used only, there is little demand on county services by the owners. But the tax base pays for services that are provided year-round to the rest of the county.

Coastal communities' construction and real estate industries depend on the development and redevelopment of properties. To the extent withholding insurance removes properties from either marketplace, those industries will suffer significantly.

Finally, Section 406 effects a partial taking, and so contravenes the 5th Amendment to the U.S. Constitution. When property is designated as being subject to destruction in 30 or 60 years, there is an inherent diminution of value, and that diminution is not compensated. The implied restrictions on use will be reflected in the resale price of the property. Reasonable, investment-backed decisions will be circumvented. The property owner is entitled to be compensated for this.

It is true there is no "right" to flood insurance. But it is also true that government cannot restrict reasonable use of property. Withholding flood insurance has that effect.

MAPPING EROSION HAZARD ZONES

Section 604 calling for identification of erosion hazard areas is likewise misguided. The NFIP does not and should not be expected to provide insurance for the risk of erosion, as opposed to flooding. If erosion is to be addressed it should be through the Coastal Zone Management Act; it is not a flood insurance matter. Coastal erosion is four-fifths caused by artificial maintenance of inlets, groinfields and other manmade coastal features. Both the causes and the cures are well known and can be addressed in other legislation.

It is true that S. 1405 does not base regulations on the results of the proposed mapping, but simply requires that it be done. First, there is real concern that if the mapping is to be funded from the contributions of the insured property owners into the fund, the fund will be unable to meet the claims made against it. If the fund is continually raided to pay for things unrelated to insurance claims, the program will soon be bankrupt.

Second, there is serious scientific question of whether erosion rates can be accurately mapped using present technology. Moreover, the bill requires that "critical" erosion areas be mapped first. These are known to be coastal erosion hazard areas, even though the bulk of the losses in the NFIP stem from riverine areas. From an insurance standpoint, the areas responsible for the greatest amount of current loss experience should be examined first.

REPETITIVE LOSS STRUCTURES

Repetitive losses should be addressed, but the formula in Section 102(a)(15)—two losses in ten years amounting on average to 25 percent each—does not reach the problem. The 42 percent of claims represented by the 2 percent of repetitive loss structures is a problem that should be studied. It is not two losses amounting to

50 percent, but numerous much smaller losses. The language does not seem to reach this problem by referring to "two" losses. It should be relatively simple to assign each insured structure an identity number and record all claims against it. Once the repetitive loss structures have been identified, a formula can be developed that would reduce this category of loss.

The requirement for imposing "actuarial" rates for repetitive loss structures (Sec. 601(b)) should also be amended. "Accepted actuarial principles" includes administrative costs, specifically including the cost of mapping erosion hazard areas (Sec. 1307(a)(1)(B)(iii)). This means the insureds can be charged anything the Director feels is needed to accomplish his mapping task and then use this higher administrative cost to justify higher "actuarial" premiums. Since there is a real question of the value or efficacy of erosion rate mapping, the bill should specifically exclude mapping costs from the administrative costs used in part to develop actuarial rates.

INCREASED COST OF CONSTRUCTION

Coastal property owners applaud the concept in Sec. 602 of providing additional coverage to comply with local land use measures for repetitive loss structures (if better defined than in the present bill) and structures damaged by more than 50 percent of pre-storm value. Properly administered, this provision will bring pre-FIRM structures into conformity with present building codes. Care must be taken, however, to phase this program in carefully. Premiums *must* remain affordable as the enabling legislation recognized. New efforts that would require major premium hikes have to be carefully addressed to avoid forcing individuals, who may perceive themselves at low risk, from opting out of NFIP coverage.

If the changes suggested are accepted, the Long Island Coastal Alliance will enthusiastically endorse S. 1405.

Town of Ocean City
Maryland

ROLAND E. POWELL
MAYOR

September 14, 1993

The Honorable Paul Sarbanes
United States Senate
Senate Office Building
Washington, DC 20510

Dear Senator Sarbanes:

Re: S.1405 National Flood Insurance Reform Act of 1993

The Mayor and City Council of Ocean City has followed the progress of the above referenced bill and have studied the current version. We wish to advise you of our support for S.1405 in its current form.

Our support is based on the following observations;

1. Compliance and Increased Participation. Improved lender compliance in requiring flood insurance will increase the number of participants in the program. Although we understand that Ocean City has a high percentage of covered properties, many areas that are flood-prone (particularly riverine areas) are not adequately insured. It is our hope that increased compliance will make the program stronger and lead to stable or reduced premium rates.

2. Community Rating System. The Town of Ocean City is an active participant in the CRS and we strongly support it as an incentive for flood protection. Formally authorizing the CRS is an important part of S.1405, as is the provision that communities that manage erosion hazards will be eligible for additional credit.

3. Determination of Erosion Rates and Consideration of Mitigation Activities. From Ocean City's perspective, it is imperative that, in identifying erosion hazard areas, FEMA "shall determine erosion rates based on the presence of any community erosion control measures and erosion of the area in the absence of the project. The Director shall use the lower estimated erosion rate in the determination of erosion hazard areas." (Section 804 (b) (1) (3)).

As you know, the Atlantic Coast of Maryland Hurricane Protection Project, as constructed and maintained, provides 100-year storm protection to properties in Ocean City. The project's impact, and not historic erosion rates, must be recognized in identifying erosion hazard areas. We would expect that, as long as the project is maintained to its design effectiveness, Ocean City's erosion rate would be zero.

4. Mitigation Grants and Insurance. Mitigation incentives should positively affect the flood resistance of flood-prone areas and the fiscal stability of the flood insurance program.

In Ocean City, we recognize the importance of the National Flood Insurance Program, and we support your efforts to make it more effective. We therefore support S.1405 assuming that the points raised in this letter are retained.

Thank you for your efforts.

Sincerely,
Roland E. Powell
Roland E. Powell
Mayor

/wjl
cc: Correspondence '93

STATEMENT OF THE AMERICAN BANKERS ASSOCIATION

Mr. Chairman and Members of the subcommittee, the American Bankers Association is pleased to submit its views regarding S. 1405, the "National Flood Insurance Reform Act of 1993."

The American Bankers Association (ABA) is the national trade and professional association for America's commercial banks, from the smallest to the largest. ABA members represent about 90 percent of the industry's total assets. Approximately 94 percent of our members are community banks with assets of less than $500 million.

This committee's action, and particularly the efforts of Senator John Kerry, to examine the status of the Federal Flood Insurance Program are both timely and important. Lenders have a great deal at risk if the properties that provide the collateral for their loans are located in flood hazard areas and are not covered by flood insurance. The ABA believes that insured financial institutions have made a strong effort to comply with the requirements of the Flood Disaster Protection Act of 1973, and will strengthen their efforts on compliance in the future.

The National Flood Insurance Program was established to protect the taxpayer from risk and exposure to flood emergencies. Congress mandated financial institutions to require flood insurance as a condition of making or renewing, extending, refinancing, or increasing a loan. Congress *did not* require flood insurance on properties that are not financed through a Federally insured financial institution or with a Federally insured mortgage. About 50–60 percent of all homeowners carry no mortgage on their home and therefore do not have to comply with the requirement to purchase flood insurance if they are in a flood hazard area. This makes 100 percent compliance with the program virtually impossible.

MAP UPDATES

We commend the language contained in S. 1405 which would require FEMA to publish every six months a compendium of all changes and revisions to the flood insurance map panels in the Federal Register, or through some other comparable method.

This will allow mortgage lenders and servicers quick and ready access to flood remappings which may affect loans in their servicing portfolios. There is currently no requirement that FEMA publish this information, adding a layer of regulatory burden on lenders to have to research which properties may have been remapped into flood hazard areas. This provision should make it easier for mortgage lenders and servicers to improve their ongoing compliance with flood insurance laws.

FORCE PLACING FLOOD INSURANCE

We also strongly support the section of S. 1405 which will allow mortgage lenders to "force place" flood insurance anytime during the term of the loan if the lender determines that the property is in a flood hazard area and the property is not covered by flood insurance. The legislation provides that if the lender determines the property to be in a flood hazard area and not covered by flood insurance, he shall notify the borrower that the borrower must obtain flood insurance for the term of the loan. If after 60 days, the borrower fails to obtain flood insurance, the lender shall purchase the insurance on behalf of the borrower and charge the borrower for the insurance premiums.

This provision should also improve ongoing compliance with flood insurance laws for mortgage lenders and servicers by providing a vehicle to legally force place flood insurance for homeowners who refuse to purchase the required insurance voluntarily.

ESCROW REQUIREMENTS

S. 1405 would require lenders who currently escrow for a loan for other purposes (i.e., taxes, insurance premiums) to escrow for premiums for flood insurance. This provision should not cause lenders any undue burdens since it only pertains to loans which would have escrows established for other purposes as well. In fact, it should act to increase ongoing compliance since the mortgage lender or servicer will have control over the payment of premiums to keep flood insurance policies in force on affected properties resulting in fewer lapsed flood insurance policies.

STANDARD DETERMINATION FORM

S. 1405 directs FEMA, in consultation with Federal lending regulators, to develop a standard flood hazard determination form for use in connection with every loan secured by property in a flood hazard area.

ABA would recommend that language be added to require the regulators to receive comments from financial institutions on the development of this form. While uniformity and detail of data used to determine if a property is in a flood hazard area are the goals of the standard determination form, lenders will want to ensure that the form does not become so elaborate as to cause an increased regulatory burden on those completing the form.

The legislation includes a requirement that if a third party provides the information on the determination form that that third party must guarantee the accuracy of the form. Currently, many lenders rely on appraisers to do the flood determination, and it is unlikely that appraisers will bear the additional cost or risk of guaranteeing their determinations. We are concerned that fewer lenders, particularly smaller community banks will be able to find a third party to provide the information, or will have to complete the flood determination form themselves.

PENALTIES AND EXAMINATIONS

For the first time in history, the law will require that bank regulators determine compliance with the requirements of the National Flood Insurance Program during banks' regularly scheduled on-site examinations. While it is occasionally the practice of the examiners to look at a lender's loan portfolio for flood insurance compliance, it has not previously been statutorily mandated.

In addition, S. 1405 provides for civil penalties if a lender is found to have a "pattern or practice" of violations pertaining to flood insurance. The penalties may not be more than $350 per violation and up to $100,000 per year. Also, the regulator may require the lender to take remedial actions if the lender, in the view of the regulator, has not demonstrated measurable improvement in compliance despite the issuance of penalties.

While the ABA recognizes that lenders will not face civil penalties unless there is a pattern or practice for violation of the National Flood Insurance Program, nonetheless, this is the first time that the statute will require on-site examinations for flood insurance compliance and a framework for penalties. Both of these provisions cause us concern. Increased bank examination for flood insurance compliance will add to the cost and time involved in completing a bank examination. At the outset, we are unsure that the examiners will understand the complexities of the determination process of the National Flood Insurance Program and may not be able to accurately judge the bank's performance in this area.

IN CONCLUSION

The ABA strongly supports language in S. 1405 which allows lenders to force place flood insurance anytime during the life of the loan. We do recognize that the lending industry needs to be diligent with regard to flood insurance compliance at both the time of loan origination and throughout the life of the loan in order to keep flood policies in force. We believe that the goals of S. 1405 are to promote greater compliance without adding undue burden to the lending industry and, to that end, most of the provisions contained in S. 1405 make good business sense. We look forward to continuing to work with the committee in developing a workable approach to compliance with the flood insurance program.

FISCAA
FLOOD INSURANCE SERVICING COMPANIES ASSOCIATION OF AMERICA, INC

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September 10, 1993

Paul Weech/Chris Warren
Senate Banking
535 Dirkson SOB
Washington, D.C. 20510

Dear Mr. Weech & Ms. Warren:

Two years ago, some of the more active and involved companies in the National Flood Insurance Program's Write-Your-Own (WYO) program, formed an association to represent their interests before Congress on legislation impacting the flood insurance program. The organization was incorporated as a non-profit association and named the Flood Insurance Servicing Companies Association of America, Inc. (FISCAA).

This is our first opportunity to formally comment on pending legislation as we were still organizing when the hearing on S. 2907 occurred.

The enclosed position paper represents our written testimony on S. 1405, the "National Flood Insurance Reform Act of 1993".

We have commented on various titles in the legislation but focused on Title II which is designed to improve compliance with the National Flood Insurance Act of 1968. We have a strong perspective on the inherent weaknesses of the current Act in the marketplace as well as some possible solutions to these problems. There is no question the legislation is needed if the Program is to meet the visionary goals of the original legislation. Unfortunately, we don't believe S. 1405 in its current configuration does that. With a little help, it can.

We hope you strongly consider our recommendations and incorporate them into your debate and ultimately, the legislation, so that a mechanism is finally put in place that effectively protects America's property owners against the disastrous losses caused by flooding.

Sincerely,

David K. Meehan
President
Flood Insurance Servicing Companies Association of America, Inc.

WRITTEN TESTIMONY OF THE FLOOD INSURANCE SERVICING COMPANIES ASSOCIATION OF AMERICA, INC.

INTRODUCTION

FISCAA was organized in May, 1992, with the explicit purposes of protecting and enhancing the ability of the flood insurance industry to provide necessary coverages and services to the public through educational seminars, regular Association publications, and other planned activities by:

(a) Advising the Congress, the Federal Insurance Administration and the National Flood Insurance Program of the concerns and needs of the insurance companies writing and servicing flood insurance.

(b) Establishing a source of factual information for the general public, news media, and other interested groups.

(c) Informing the public, consumers, the Federal Insurance Administration, the constituencies of the National Flood Insurance Program, and the Congress of the beneficial contributions of the flood insurance industry through a public awareness program.

(d) Apprising member companies of the attitudes of the public, news media, and public officials toward the flood insurance industry.

FISCAA is comprised of thirteen member companies representing approximately 700,000 or nearly 30 percent of the flood insurance policyholders in the Program. Both policyholders and company members live and do business throughout the United States, its territories and possessions.

As the saying goes in the world of retailing, there are three factors which determine the success or failure of a store. They are "location, location, and location." In our view, the three factors which will determine the success or failure of the National Flood Insurance Program as envisioned by the original drafters must be *"COMPLIANCE, COMPLIANCE, COMPLIANCE."*

As you know, the Federal Government estimates that only 15 percent of those properties who should be protected with flood insurance are. The recent tragedy in the Midwest brings home these statistics dramatically. The under utilization of flood insurance has cost our country dearly. For example, of a population of 11,500,000 in Illinois, there are less than 30,000 flood insurance policyholders. With a population of over 5,000,000, Missouri has fewer than 15,000 policyholders (and as of September 1, 30 percent had submitted flood claims, a very high percentage for a single State). The story in Kansas and Iowa is the same. Only 8,200 policies in Kansas for a population of 2,500,000, and 6,700 policies in Iowa for a population of 2,800,000. You are well aware of the cost to the U.S. Treasury for the disaster. Much of it would have been averted if compliance had been achieved years ago. The coastal communities may get the publicity in this debate but we tend to forget the bulk of properties at risk are those primary homes that in most cases pre-date the NFIP. These aren't second homes and, they don't afford breath taking views of large bodies of water. They are in the thousands of towns and hamlets that followed the western expansion of Manifest Destiny as the Nation grew west. These homes were built on the highways of the time . . . the small rivers that drain to the Missouri and the Mississippi as well as the trading communities which grew to mighty cities on the banks of these rivers. People built towns and farms in these areas and they didn't even know they were in Special Flood Hazard Areas. They knew they flooded periodically but didn't know there was a special name for it. They continue to live there because their "home place" is their roots. Whether it is the Florida coast ravaged by the fury of an Andrew, the small inland communities in South Carolina ripped apart by Hugo, the many towns and cities in Ohio and Pennsylvania hundreds of miles from the coast pummeled by Hurricane Agnes, or the farmlands of the Midwest, it is still "home" and the availability or lack of flood insurance is not the reason people stay.

We strongly support your effort to clarify and enforce compliance with the original and amended legislation. As is obvious, insurance agents experience great difficulty in selling flood insurance even though the chance for flood during the life of a 30-year mortgage for a structure in a Special Flood Hazard Area is one in four. It is only one in one hundred for fire yet fire insurance has become an accepted norm. No one questions its need anymore. We hope that the issue of flood insurance reaches this level of acceptance in the very near future.

It has been said by many that "only God and lenders sell flood insurance." That is why we need meaningful legislative assistance to increase compliance. To that end, we offer the following comments and recommendations.

TITLE II—COMPLIANCE AND INCREASED PARTICIPATION

(1) Escrowing for flood insurance is critical if we are to prevent non-renewal of flood policies. It is the only way to quantify the renewals and be assured that the premiums are available at the time of renewal. As you know, in order to qualify for Federal disaster assistance if you are flooded and live in a Special Flood Hazard Area, you are required to buy flood insurance. Unfortunately, the majority of people drop their policies at renewal time, even when they bought their policy as a condition of getting a disaster loan or grant.

(2) Recent proposed legislation specifically prohibited the waiving of the flood insurance requirement for any reason. This provision is not included in S. 1405 and should be.

While the argument can be made that laws cannot be waived, in the lending community, it is not uncommon to waive required insurance coverages such as Collateral Protection for consumer loans. By doing this, the lender has in effect, assumed the risk through self insurance. This is not now nor has it ever been an option for flood insurance. We need legislative clarification because it causes many problems for lenders.

(3) The existing Act requires lenders to notify the purchaser of improved property in a Special Flood Hazard Area that flood insurance is required on the property. The Act states this must be done in a "reasonable time," which the FIA interprets as 10 working days. S. 1405 does not address this issue. Without notification prior to closing, the applicant does not have an opportunity to get the needed coverage in time so the closing is delayed, or, the lender, in effect, waives the requirement by not even bringing it up. The consumer needs prior notification in order to make an informed decision. We strongly urge that notification requirements be retained in S. 1405.

(4) Previous drafts of this legislation allowed lenders to pass on to the borrower a reasonable fee for flood zone determinations, notwithstanding Federal, State or local law. This provision is missing from S. 1405. As lending customs are quite consistent on what constitutes "closing costs," and flood zone determinations do not appear to meet any of these categories, the lender is placed in the position of having to pay for the determination or suffer the consequences of fines and related penalties. We recommend that a provision be included in the legislation that would allow the lender to be reimbursed for any reasonable costs associated with determining the flood zone status of an improved property.

TITLE III—RATINGS AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT PROGRAM

(5) We wholeheartedly support the establishment *in law* of the Community Rating System (CRS). It has worked very well as introduced through rules and regulation to not only safeguard communities from the ravages of flood but reward their citizens with lower flood insurance premiums as a reflection of the new safeguards. A missing piece, however, is a greater public awareness program of the CRS. Now, one way for the community to earn credits is by publicizing the Program. There should be additional help or at least, this requirement could be prioritized as a mandated requirement for becoming a CRS community.

TITLE IV—MITIGATION OF FLOOD AND EROSION RISKS

(6) As insurance companies, we are in the business of selling insurance yet by mandating the *denial of insurance* you have eliminated the opportunity for all property owners to have access to coverage at actuarial rates. Because the risks in these areas of denial are unarguably higher, the premiums would be comparably higher. We strongly support an alternative provision which affords the ability to purchase insurance. One way to accomplish this is through the CRS mechanism. The Director would have the ability to deny insurance in certain situations of non-compliance much like other lines of insurance with specific underwriting guidelines for preferred business. We can reasonably assume that communities who voluntarily participate in the CRS program would equate to preferred risks in the insurance industry. This allows the communities to have some control of their rating structure.

The non-participating communities would, in essence, be the non-preferred risks or the non-standard risks similar to those in the residual markets. Insurance would be available to all but the premium for the risk would be actuarially sound. Should the Director deny insurance, the consumer property owner still has recourse.

(7) We support the termination of the erosion-threatened structures program (Upton-Jones). It has never been considered an "insurance program" because it requires the NFIP to pay claims *in anticipation* of losses. Insurance doesn't work this way.

TITLE VI—MISCELLANEOUS PROVISIONS

(8) An increase in the available amounts of coverage has long been needed. We would request you even go higher in establishing the limits since the suggested increase doesn't begin to reflect the "inflation" in property values and building costs that have occurred since the last increase over fifteen years ago. The coverages should be realistic with today's market rates. From an underwriting perspective, high-valued properties generally constitute a better risk and historically a lower loss ratio.

(9) In this same vein, we also recommend that you require replacement cost coverage rather than limiting coverage to the amount outstanding on the mortgage. For a homeowner who has nearly paid off his or her loan and consequently has minimum flood coverage, he or she is woefully exposed when the flood does come.

(10) There is a concern that efforts by many States and local governments to impose taxes and levies upon NFIP flood insurance premiums collected by WYO companies, beyond the premium tax which helps States regulate insurance company solvencies and license insurance agents and brokers, may eventually lead to Congressional action which pre-empts all State and local taxation, including the premium tax which funds a very vital service. We recommend specific language that will limit the ability of the States to impose taxes on premiums collected for deposit in the National Flood Insurance Fund except for the aforementioned premium tax which the FIA and the WYO Flood Companies believe should be paid.

We sincerely appreciate the opportunity to provide these comments and recommendations on what can be a landmark event in the history of the NFIP.

Bankers
INSURANCE GROUP
Bankers Insurance Company/Bankers Life Insurance Company of Florida

September 9,1993

Paul Weech/Chris Warren
Senate Banking
535 Dirkson SOB
Washington, D.C. 20510

Dear Mr. Weech & Ms. Warren:

The enclosed position paper represents our written testimony on S. 1405, known as the "National Flood Insurance Reform Act of 1993".

We, at Bankers Insurance Group, have been involved in the National Flood Insurance Program since the inception of the government arrangement with private sector insurance companies, known as the Write Your Own Program (WYO). Of the approximately 90 companies in the Program, we are the fourth largest in terms of flood insurance policies written and serviced through us by insurance agents.

Although we strongly recommend a strengthening of the legislation in order to help safeguard the nation from the ravages of flood, and have so commented on in Titles IV and VI, we are most concerned with Title II and the effort to improve compliance with the National Flood Insurance Act of 1968. As you know, it proposes to solve this problem through additional requirements on the lending community. This is one of our areas of expertise as we work with lenders on this Program throughout the country on a regular basis.

Bankers has been a very interested participant in the predecessors to S. 1405. As a matter of fact, I had the privilege of testifying last year on S. 2907. The attached not only represents our concerns but also those of representatives of the lending and zone determination industries with which we work.

We are in complete agreement that the legislation is needed if we are to meet the laudatory goals of the drafters of the 1968 Act. As it is now worded, we don't believe S. 1405 meets that need.

Hopefully, our concerns and recommendations will help us all get closer to the original goal. We appreciate the opportunity to submit this testimony.

Sincerely,

David K. Meehan
President

P.O. BOX 15707 / ST. PETERSBURG, FLORIDA 33733-5707 / TELEPHONE TOLL FREE 1-800-627-0000

WRITTEN TESTIMONY OF BANKERS INSURANCE GROUP

Bankers Insurance Company is domiciled in the State of Florida and is currently the fourth largest writer of Federal flood insurance in the country. Writing through the Government's Write Your Own Flood Program (WYO) we have responsibility for approximately 170,000 flood policies. We have been closely watching the development of the proposed flood reform legislation for several years and we respectfully submit our comments and recommendations for your consideration.

We strongly support legislation that clarifies and enforces compliance to the requirements of the National Flood Insurance Act of 1968 and as amended, the Flood Disaster Protection Act of 1973. We also support State and local efforts in mitigating flood and erosion risks, however we cannot support legislating the denial of insurance. We would like to offer alternatives that have worked well in comparable programs in the insurance industry and when utilized in conjunction with the Community Rating System, which is included in this proposed legislation, will provide benefits to the community as a whole and the individual property owner. We are looking forward to the proposed increases in the maximum allowable limits for flood insurance coverage which have not been raised since 1978 and are grossly out of line in today's economy. Finally, we request your assistance in getting language inserted in the pending legislation that will limit the ability of the States to impose taxes other than the estate premium tax which the FIA and the WYO Flood Companies believe should be paid. We believe that S. 1405 with some tweaking and fine tuning can be the legislative instrument that will prove beneficial to the overall success of the National Flood Insurance Program.

Bankers has been a committed participant in the WYO Program since it's inception in 1983 and was one of the first six companies to sign the "Arrangement" with FIA. In many companies flood insurance is viewed as an accommodation product for their agents. In our company flood insurance is our number one product. We have extensive experience in the many intricacies of flood insurance as it is utilized by lenders, borrowers, and agencies in twenty-one States. We are also cognizant of the fact that existing legislation has not achieved the desired level of compliance that was the original intent of Congress in order to minimize the economic devastation to homeowners resulting from flood and reduce the drain on the Federal budget. Unfortunately, recent statistics emerging from the Midwest only serve to emphasize what we have known for many years, that the vast majority of high risk households eligible for flood insurance (approximately 85 percent), do not buy it.

Bankers has taken a leadership role in its efforts to expand the flood policy base and enhance the public awareness to the peril of flood. The company has dedicated resources and personnel to the training of agents, financial institution staff and company staff on flood insurance. We have invested heavily in the development of systems and technology in order to make all Federal flood products available to our customers. The Company President serves as Chairman of the National WYO Flood Marketing Committee and is President of the Flood Insurance Servicing Companies Association of America (FISCAA). The Company's Chief Financial Officer is a working member of the WYO Flood Standards Committee. The Senior Vice President serves on the Flood Committee of the National Committee of Property Insurers (NCPI), the National WYO Flood Marketing Committee, and is Secretary for the FISCAA.

Having said all of the above . . . even with our credentials and corporate commitment to the marketing of flood, the sale of flood insurance is more than challenging. Agents experience great difficulty selling flood insurance. Many will tell you that it's the hardest product for them to sell even though, during the life of a thirty year mortgage loan for a home located in a Special Flood Hazard Area, there is a 25 percent chance (1 in 4) that the home will experience a flood loss as opposed to a 1 percent (1 in 10) chance of loss from fire. Most people, if given the option, do not want to buy insurance and in particular, flood insurance. That's why it has been said that "GOD and LENDERS sell flood insurance."

Since flood reform legislation was formulated and drafted in the House in 1990 and H.R. 1236 was introduced in May, 1991 in an effort to rectify the low compliance problem, we have experienced some of the worst property damaging natural disasters in our country's history. And credible forecasters continue to predict more frequent and more severe storms to come.

We need meaningful legislative assistance. To that end we offer our comments and suggestions on various portions of the bill: *Title II—Compliance and Increased Participation; Title IV—Mitigation of Flood and Erosion Risks; and Title VI—Miscellaneous Provisions.*

TITLE II—COMPLIANCE AND INCREASED PARTICIPATION

(1) Existing legislation does not make mention of refinances in the same context of "makes, increases, extends, renews, or purchases," when discussing loan activity. Refinancing was not a common term when the original legislation was drafted. We suggest adding the word "refinance" to makes, increases, extends, renews, or purchases, as appropriate throughout the bill.

(2) Previous drafts of this legislation specifically prohibited waiving the flood insurance requirement for any reason. We strongly urge that the waiver prohibition be restored to S. 1405 because the lack of clarity on this subject in the existing legislation has caused considerable problems for lenders in the past. While the argument can be made that a law is a law and laws cannot be waived, in the lending environment it is common practice to waive required insurance coverages such as Collateral Protection on consumer loans. When this is done the lender opts to self insure the risk. Self insurance is not now nor has it ever been an option in flood insurance, however we need legislative clarity on this point.

(3) Existing legislation requires the lender to notify the purchaser of improved real estate of the special flood hazard in writing within a reasonable period in advance of the signing of the purchase agreement, lease or other documents. Subsequent guidelines have interpreted "reasonable" as at least 10 days notice prior to closing. S. 1405 does not mention when a lender should notify a mortgage applicant that the property is in a Special Flood Hazard Area. Without notification prior to closing the applicant does not have the opportunity to make an informed decision regarding a major purchase nor can the borrower obtain flood insurance which could be a condition of closing. Current notification guidelines of at least 10 days prior to closing, or at time of commitment, whichever is earlier, have worked well in the past and we strongly urge their inclusion in S. 1405.

(4) S. 1405, Section 1364(e) requires participating communities to notify and warn homeowners and "known lenders" when individual properties are reclassified as in a SFHA on a new or revised flood map. This implies that the communities will be making the determinations. There are a number of questions to be raised in connection with this approach:

a. How will it be determined what source communities will use for flood hazard determinations? Will they use FEMA flood maps exclusively? How will this be regulated? Will there be penalties for using unofficial maps?

b. In accordance with the guarantee provision, will the community have to guarantee the accuracy of its determinations and reimburse the homeowner for an uninsured flood loss or unnecessary flood insurance premiums paid due to an inaccurate determination?

c. How will the community determine which lenders are active in their community? What about "unknown" lenders?

d. Since many lenders sell or transfer the servicing of their mortgage loans to firms located all over the Nation, and the servicer is responsible for updating, how will the communities know whom to notify?

We submit that this provision is unwieldy and unworkable and suggest that it be deleted in its' entirety and the notification requirements clearly stated in S. 1405 Sec. 604 be sufficient to fulfill the intent of this provision.

(5) We believe that Section 205(e) which permits reliance on a previous determination less than five years old to be counter-productive. FEMA estimates that there is an average of 6,000 new and revised maps issued annually. Inevitably, the change in flood status of many properties will be missed over a period of five years resulting in uninsured flood losses on properties in a SFHA, the situation the legislation is designed to eliminate.

We suggest that this Sec. 205(e) be deleted in it's entirety from the text.

(6) Previous drafts of this legislation permitted lenders to charge a reasonable fee for flood zone determinations to the borrower notwithstanding any Federal, State, or local law. This provision has been removed from S. 1405 and we believe that without the option to charge for the zone determination the lender is being placed in the position of having to fund the determination process themselves or suffer the consequences of fines and related penalties. We recommend inserting into Sec. 205"(e)" *Fee for Conducting Determination* and we suggest the following wording, "Notwithstanding any other Federal, State, or local law, any user of the Standard Determination Form as described in Sec. 1365"(c)" *Required Use* may charge the borrower a reasonable fee for the costs of determining whether the improved real estate or manufactured home securing the loan is located in an area of special flood hazards.

TITLE IV—MITIGATION OF FLOOD AND EROSION RISKS

(7) As an insurance company we are in the business of providing insurance coverages and mandating the denial of insurance is not usually the norm. While some risks are certainly more desirable than others, there is usually an opportunity for all property owners to obtain at least the minimum required coverages albeit at an appropriate rate. Therefore we cannot support the provision to deny insurance as indicated in *Title IV—Mitigation of Flood and Erosion Risks* Sec. 1314 without a corresponding alternative provision which affords the ability to purchase insurance. We believe this can be accomplished through utilization of the Community Rating System (CRS) in this section of the bill. By making CRS a significant factor in this section the Director theoretically retains the ability to deny insurance in certain situations of non-compliance much like other lines of insurance with specific underwriting guidelines for preferred business. It is reasonable to assume that communities voluntarily participating in CRS would equate to preferred risks in the insurance industry. This method also allows the individual communities to have some control of their rating structure.

Those communities who do not voluntarily participate in CRS would in essence be the non-preferred risks or the non-standard risks similar to those in the residual markets. While insurance would be available to everyone the risk would be actuarily calculated. The obvious benefit to this type of program is that in the event that the Director should be forced to invoke his authority and deny insurance on a structure(s), the property owner still has recourse.

Note: We have attached suggested language to accomplish this. Please refer to Attachment A.

TITLE VI—MISCELLANEOUS PROVISIONS

(8) We wholeheartedly support the provisions for increasing the available amounts of coverage in the flood insurance program. The amount of coverage available in the flood program has not been increased since 1978. That was fifteen years ago. Today's consumer understands insurance to value and wants replacement cost on their property when they suffer a loss. They don't want to recover a portion of their loss, they want to be made whole. Property values have certainly increased over fifteen years as has the price of labor and material needed to replace a home.

From an underwriting perspective, high valued properties generally constitute a better risk and historically produce a lower loss ratio.

(9) We also recommend that all lending entities be encouraged to adopt regulations comparable to those now promulgated by some Federal agencies which require the amount of flood insurance to be equal to the lesser of 100 percent of the insurable value of the building or the maximum coverage available in the NFIP in order to accommodate insurance to value. This could be accomplished by footnote or other notation to the legislation.

(10) Normally government does not tax government but in recognition of the role of States in regulating insurance company solvency for other lines of insurance and the role that State regulation plays in licensing insurance agents and brokers, the Federal Insurance Administration has authorized insurance companies participating in the NFIP to pay State premium taxes. This is a policy the Federal Insurance Administration has followed since the inception of the NFIP in 1968 and it seems reasonable to continue.

The FIA has expressed concern that the efforts by many States and local governments to impose taxes and levies upon NFIP flood insurance premiums collected by WYO companies, beyond the premium tax which we believe should be paid, may lead to eventual Congressional action to pre-empt State taxation and regulation in the case of the NFIP, a step which would probably extend to the premium tax, as well as to the other types of State and local taxes.

Under the terms of the Arrangement between the WYO companies and the FIA, the WYO companies are allocated a certain percentage of premium to pay agent commissions, State premium taxes and marketing and servicing expenses. When States demand more than the allocated average amount targeted for State premium tax companies will be less inclined to market flood insurance in those States. Ironically the State of Alabama sued FEMA for not doing an adequate job of promoting the flood program. There are many companies active in marketing flood insurance in the Write Your Own Program who choose to avoid marketing in Alabama because they have the highest taxes in the country applicable to insurance premiums. The expense allowance paid to the companies by the Government is not adequate for this percentage to be paid to the States without sacrificing other services to the customer.

We respectfully suggest that these problems could be solved by amending *Title VI* of S. 1405, Sec. 607 *Regulations* to read:

The Director of the Federal Emergency Management Agency and any appropriate head of any Federal agency may each issue any regulations necessary to carry out the applicable provisions of this Act and the applicable amendments made by this Act. No State or local governmental body shall have the authority to promulgate rules or regulations, pass laws, or issue policies that directly or indirectly affect or govern agreements, arrangements, contracts, or actions authorized by the National Flood Insurance Act of 1968, as amended, the Federal Disaster Protection Act of 1973, as amended, and this Act; premiums collected for deposit in the National Flood Insurance Fund shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency or possession thereof, or by the State, county, municipality, or local taxing authority, except that the insurance policies issued by or in conjunction with the Federal Government pursuant to the National Flood Insurance Act of 1968, as amended, the Federal Disaster Protection Act of 1973 and this Act; shall be subject to State insurance premium tax only.

We sincerely appreciate your consideration of our recommended changes and comments and the opportunity to provide input to this pending legislation.

ATTACHMENT A

On page 37 line 20 insert after area "(in communities voluntarily participating in the Community Rating System (CRS))"

and on line 21 insert after construction "(that is not built in accordance with criteria established for local community participation in the CRS;)"

and on line 23 insert after structure "(to be)"

and on line 23 delete after not "(readily movable)" and replace with "(in accordance with criteria established for local community participation in the CRS)"

On page 38 line 4 insert after ; "(or)"

and on page 38 line 5 delete after not "(readily movable)" and replace with "(built in accordance with criteria established for local community participation in the CRS)"

and on page 38 line 8 insert after structure "(to be)"

and on page 38 line 8 delete after not "(readily movable)" and replace with "(in accordance with criteria established for local community participation in the CRS)"

and on page 38 line 11 insert after section "(in communities voluntarily participating in the CRS)"

On page 38 insert after line 11 and before Sec. 407"(c)" *Premiums for Flood and Erosion Risk Areas in Communities Not Voluntarily Participating in the Community Rating System.*—With respect to structures that are subject to flood and/or coastal erosion risk and are located in communities that choose to not voluntarily participate in the Community Rating System Program, premiums shall be calculated based on the actuarial risk for these structures.

(b) *Transition.*—The Director of the Federal Emergency Management Agency (hereafter in this title referred to as the "Director") may pay amounts under flood insurance contracts for demolition or relocation of structures as provided in section 1306(c) of the National Flood Insurance Act of 1968 (as in effect immediately before the date of enactment of this Act) only during the 1-year period beginning on the date of enactment of this Act.

SEC. 406. LIMITATIONS ON NEW FLOOD INSURANCE COVERAGE IN EROSION HAZARD AREAS.

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended by inserting after section 1313 the following new section:

"SEC. 1314. PROPERTIES LOCATED WITHIN 30-YEAR AND 60-YEAR EROSION HAZARD AREAS.

"(a) *Properties Located Within 30-Year Erosion Hazard Area.*—After the establishment of erosion hazard areas under section 1360(i), the Director may not make flood insurance available within a 30-year erosion hazard area in communities voluntarily participating in the Community Rating System (CRS) with respect to any new—

"(1) construction that is not built in accordance with criteria established for local community participation in the CRS; or

"(2) addition to an existing structure, if the addition makes the structure to be not in accordance with criteria established for local community participation in the CRS.

"(b) *Properties Located Within 60-Year Erosion Hazard Area and Outside 30-Year Erosion Hazard Area.*—After the establishment of erosion hazard areas under section 1360(i), the Director may not make flood insurance available with respect to any new—

"(1) nonresidential structure; or

"(2) residential structure that is not built in accordance with criteria established for local community participation in the Community Rating System; or

"(3) addition to an existing structure, if the addition makes the structure to be not in accordance with criteria established for local community participation in the Community Rating System; that is constructed or relocated landward of the 30-year erosion hazard area and within the 60-year erosion hazard area established by the Director under such section in communities voluntarily participating in the CRS.

"(c) *Premiums for Flood and Erosion Risk Areas in Communities Not Voluntarily Participating in the Community Rating System.*—With respect to structures that are subject to flood and/or coastal erosion risk and are located in communities that choose to not voluntarily participate in the Community Rating System Program, premiums shall be calculated based on the actuarial risk for these structures.

SEC. 407. RIVERINE EROSION STUDY.

(a) *Study.*—The Director shall conduct a study to determine the feasibility of identifying and establishing riverine erosion hazard areas, erosion rates, and baseline reference features, and the best methods of community management of such hazards consistent with section 1361 of the National Flood Insurance Act of 1968. In conducting the study, the Director shall—

(1) investigate and assess existing and state-of-the-art technical methodologies for assessing riverine erosion;

(2) examine and evaluate natural riverine processes, environmental conditions, human-induced changes to the banks of rivers and streams.

COMMENTS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TITLE I—DEFINITIONS

Section 101(a)(7)

The bill defines "regulated lending institution as a 'bank, savings association, credit union, or *similar institution subject to the supervision, approval, regulation* or insuring of a Federal entity for lending regulation'."

Because of the vagueness of the italicized provision above, there is some question as to what is covered. Does this mean that a foreign entity, or some other type of business subject to Board approval or Board regulations would be covered? If there is something more specific that the Congress wants to address here, it should be spelled out.

Section 1364. Notice Requirements

Section 1364(c) Participating Communities—states that every six months, the Director of FEMA will send a list of changes, revisions, and amendments made to flood insurance rate maps during the preceding six months to each participating community. In turn, the participating community will be required, by regulation, to "provide annual notice by mail, . . . publication, . . . or other reasonable method, to regulated lending institutions that are known to lend in the community, and to the owners of all properties newly determined to be in special flood hazard areas, *of the requirement that Federal flood insurance be purchased for insurable structures located within the special flood hazard areas of the community.*"

There is no requirement that flood insurance be purchased on these properties. The requirement is that no loan in a flood hazard area be made, increased, extended, or renewed without flood insurance.

Section 204. Placement of Flood Insurance By Regulated Lending Institution or Federal Agency Lender

Section 204(e)(1) Notification to Borrower of Lack of Coverage—states that,

> *If, at any time during the term of a loan* [subject to flood insurance] . . . *a regulated lending institution* or Federal agency lender *determines that the building or manufactured home and any personal property securing the loan held or serviced by the regulated lending institution is not covered by flood insurance . . . the regulated lending institution* or Federal agency lender *shall notify the borrower that*

the borrower should obtain [flood insurance] at the borrower's expense . . . for the term of the loan.

It is unclear whether the proposed bill changes the applicability of flood insurance to cover properties that subsequently fall within a flood hazard area because of a map revision.

If the property becomes subject to flood insurance subsequent to any loan decision, and the lender is unaware of the change (and therefore does not notify the borrower) would the lender be held liable? Would this be a violation of this section?

Section 204. Placement of Flood Insurance By Regulated Lending Institutions or Federal Agencies

Section 204(e)(2)(b) amends section 102(e) of the Flood Disaster Protection Act to "apply to all loans outstanding on or after the date of enactment of the National Flood Insurance Reform Act of 1993." Does this mean that the flood insurance requirements would cover loans secured by property that, subsequent to the loan decision, fall within a flood hazard area? (This could be the result of FEMA's issuing a new map.)

Section 1365. Standard Flood Hazard Determination Forms

Section 1365(d) Guarantees Regarding Information.—This section states that "a person may rely on information provided by a third party to the extent that the third party guarantees the accuracy of the information." If the bank relies on the guarantor, is there a violation if the guarantor is wrong? Does the bank recover from the guarantor?

Section 1365(e) states that a person or institution increasing, extending, renewing, purchasing, or servicing a loan may rely on a previous flood hazard area determination if the "previous determination was made not later than *5 years after the date of the transaction*, and the basis for the previous determination has been set forth on a determination form."

What does the term "transaction" refer to here? Is it the "original transaction"?

Section 206. Examinations Regarding Compliance by Regulated Lending Institutions

Section 206(a) amends Section 10 of the Federal Deposit Insurance Act.

Section 206(h)(1) indicates that the "appropriate Federal banking agency shall, *during each scheduled on-site examination required by this section*, determine whether the insured depository institution is complying with the requirements of the National Flood Insurance Program."

Flood insurance is reviewed as a part of System compliance examinations. It is unclear whether this section would trigger a flood insurance examination every time a System examination is conducted, whether it is commercial, trust, EDP, or anything else. This part should be redrafted to be more specific about the type or purpose of the examination intended.

Section 207. Penalties and Corrective Actions for Failure to Require Flood Insurance, Escrow, or Notify

Under Section 207(f)(1) Civil Penalties—any bank found to have a "pattern or practice of violating this section *shall* be assessed a civil penalty . . . of not more than $350 for each violation. A penalty . . . may be issued *after notice and an opportunity for a hearing on the record.*"

Because we presently have the ability to impose penalties under FIRREA, this section appears unnecessary. In addition, because this section does not consider the severity of violations covered, it is possible that penalties could be imposed where no harm was incurred to the consumer, or the bank. For example, if examiners discovered two or three instances where a bank did not provide the notice to the consumer that his/her property was in a floodplain within the prescribed amount of time, but did require the borrowers to obtain flood insurance prior to settlement, should a fine be imposed? Substituting "may" for "shall" may be more appropriate.

Second, while the Federal Reserve may presently levy fines for other regulations and statutes, I do not believe that any of these require a notice or a hearing. Since State member banks are informally provided the option of meeting with Reserve Bank or Board staff to discuss examination problems, I do not believe that this section is necessary.

Section 207(f)(4) 3-Year Limit—states that penalties may not be imposed on banks "*after the expiration of the 3-year period beginning on the date of the occurrence of the violation.*" This section does not appear to make sense. If a bank did not require flood insurance four years ago on an outstanding loan, the loan is still in violation of the flood insurance provisions.

Section 606. Funding for Increased Administrative and Operation Responsibilities

As stated in section 606(b)(6), any penalties collected appear to go FEMA. Under FIRREA, penalties collected go to the Treasury, not the agency. Directing any penalties to Treasury in this instance would appear more even handed.

TITLE V—FLOOD INSURANCE TASK FORCE

Section 501(b)(1) Membership—states that there will be 11 members of the Task Force, and then details these members. From my calculations, however, there appear to be 12 members of this group, if you count the FFIEC as having 5 members.

Section 501(c)(4)—states that one of the duties of the Task Force (which includes FFIEC representatives) is to "study the extent to which the flood insurance rate structure could be revised to minimize existing premium rate subsidies, to incorporate premium rate adjustments for erosion hazards, to account for catastrophic loss events, and to propose strategies to establish an actuarial-based premium structure to account for all insurable risks identified under the National Flood Insurance Act of 1968."

The responsibilities set forth here are outside of the scope of the Board's responsibilities and expertise in examining State member banks for compliance with flood insurance provisions. I would suggest that this section be changed.

Section 604. Updating of Flood Insurance Maps and Identification of Erosion Hazard Areas

Under Section 604(e)(2) Assessment of Need to Update Areas.—The proposal provides that a State or community may request that a flood map be revised or updated, provided that the "State or community making the request agrees to provide not less than 50 percent of the cost, or the equivalent value of data, technical analysis or other in-kind services . . . for the requested revision or update."

Presently, FEMA is the only one who can issue revised maps. If FEMA wants to ensure that its maps are current, and if communities or States request revised maps when they deem a problem with the existing one, it seems that this section would not serve those interests, but deter any State or community from applying for a map revision.

Section 604(f) and (h) refer to the availability of flood insurance maps and related information. In these sections, State agencies responsible for coordinating and communities participating in the National Flood Insurance Program may receive copies of flood maps and "related information" free of charge. All others would be charged for these materials.

Presently, Reserve Banks receive copies of FEMA's Community Status Book as an examination reference tool. This book lists all the communities where special flood hazard areas have been identified, whether the communities participate in the National Flood Insurance Program, and the appropriate flood map for these communities. In addition, FEMA presently provides some material used to train System compliance examiners. Given that examiners need access to some FEMA resources to conduct effective flood insurance examinations, it would be helpful to continue to receive some information from FEMA free of charge.

STATEMENT OF THE OFFICE OF THRIFT SUPERVISION

DEPARTMENT OF THE TREASURY

Mr. Chairman and Members of the subcommittee, the Office of Thrift Supervision ("OTS") is pleased to provide views on S. 1405, "The National Flood Insurance Reform Act of 1993." Our remarks are limited to key provisions of the bill that directly affect the Federal financial regulatory agencies and their supervised institutions. Those provisions are primarily contained in Title II.

We support the broad-based goals of the National Flood Insurance Program ("NFIP"), which are to mitigate future flood damage through incentives for prudent floodplain management and to ensure that flood insurance is available at reasonable cost to owners of improved real property in special flood hazard areas. In addition, we support the concept of protecting property owners against potential losses, using an insurance mechanism that is funded primarily with premiums paid by those who benefit directly from such protection.

We also support the objective of S. 1405 to ensure that the NFIP combines predisaster mitigation efforts with an insurance and compliance program to reduce the physical and economic affects of flood-related damage on the Federal, State and local governments, and individuals.

EXISTING REGULATORY FRAMEWORK

The Flood Disaster Protection Act of 1973 ("FDPA") directs the Federal financial regulatory agencies ("the agencies") to issue regulations that prohibit supervised institutions from granting credit secured by improved real estate or a manufactured home located in an identified special flood hazard area unless the borrower satisfies certain flood insurance purchase requirements. Clearly, the success of this aspect of the NFIP is directly related to the level of compliance by lenders, including financial institutions, with these regulations.

OTS regulations implementing the FDPA are codified at 12 CFR 563.48. They closely track the statutory requirements and are substantially similar to those of the other agencies. However, OTS regulations additionally require that flood insurance be obtained for loans *purchased* by a savings association from other creditors. Our regulations require a savings association:

- Not to make, increase, extend, purchase, or renew any loan secured by improved real estate or a mobile home located or to be located in a designated special flood hazard area unless the property securing such loan is covered by flood insurance;
- To maintain sufficient records to indicate the method used to determine whether such loan requires flood insurance;
- To provide written notification to the borrower within 10 days before closing that the property securing such loan is or will be located in a special flood hazard area (or, in lieu of providing notice, to obtain satisfactory written assurances that a seller or lessor has notified the borrower, prior to execution of any agreement for sale or lease, that the property securing the loan is or will be located in a special flood hazard area);
- To notify the borrower whether, in the event of damage to the property caused by flooding in a Federally declared disaster area, Federal disaster relief assistance will be available for the property; and,
- To require the borrower, prior to closing, to provide the association with a written acknowledgment that the property securing the loan is or will be located in a special flood hazard area and that the borrower has received the required notice regarding Federal disaster relief assistance.

OVERVIEW OF THE OTS COMPLIANCE PROGRAM

Compliance by savings associations with laws and regulations is a priority of this Agency. Our examination efforts pertaining to flood insurance are concentrated on ensuring full compliance by savings associations with the FDPA and our implementing regulations.

The cornerstone of these efforts is our specialized compliance examination program. Under this program, compliance examinations are conducted by specially trained, career-professional staffs in our five regional offices. Our compliance personnel receive in-depth training in the pertinent laws and regulations and our examination approach and philosophy. Flood insurance is covered in specific segments of our Compliance I (for entry-level compliance examiners) and Compliance II (for more experienced examiners) training schools. Incidentally, the Federal Emergency Management Agency ("FEMA") provides a guest lecturer on flood insurance at our Compliance II school.

To enhance the effectiveness of our overall supervisory efforts, compliance examinations are conducted concurrently with safety and soundness examinations whenever practicable. However, we use a separate rating system to evaluate an association's compliance performance. The rating system triggers the frequency of subsequent examinations. Savings associations that receive satisfactory or outstanding compliance ratings are examined on a two-year cycle, while associations that exhibit various degrees of unsatisfactory performance are examined on either a one-year or six-month cycle. Our policies also permit more frequent examinations where warranted.

SPECIFIC COMMENTS ON S. 1405

Section 101 expands the coverage of the FDPA to include non-financial institution lenders and their appropriate regulatory agencies. This expansion creates a more level playing field among lenders and provides additional protections for non-financial institution borrowers. However, the other affected entities are in a better position to assess the impact that the proposed requirement may have on them or the industries they regulate.

Section 201(a) requires each "Federal entity for lending regulation" to consult with the Federal Financial Institutions Examination Council ("FFIEC") prior to adopting any regulations to implement S. 1405. At the present time, the flood insurance regulations of the FFIEC member agencies are virtually identical. Moreover, the agencies use uniform examination procedures for determining compliance with the flood insurance requirements. We are confident that any revised regulations or procedures would continue to be coordinated on an interagency basis.

Section 202 directs each "Federal entity for lending regulation" to issue regulations that require a lender to escrow all charges for flood insurance if the lender also requires the escrowing of taxes, insurance premiums or other charges for loans secured by residential real estate or manufactured homes.

We believe this requirement may help ensure that flood insurance coverage is purchased and maintained on properties in special flood hazard areas.

Section 203 directs the same Federal agencies to issue regulations that require lenders to notify borrowers of the special flood hazards and the need to purchase and maintain flood insurance. The required notice must include: (1) a warning that the property securing the loan is located in a special flood hazard area; (2) a description of the flood insurance purchase requirements; (3) a statement that flood insurance coverage may be purchased under the NFIP or be available from private insurers; and, (4) other information that the FEMA considers appropriate.

This proposed notice requirement is similar to our existing requirement, but is more extensive. We believe the additional specificity will be helpful to borrowers and avoid creating an unreasonable burden for lenders. Under our regulation, no notice is necessary if a savings association has obtained satisfactory written assurances a seller or lessor has notified the borrower, prior to execution of any agreement for sale or lease, that the property securing the loan is or will be located in a special flood hazard area. The subcommittee may wish to consider this type of exception.

Section 204 authorizes lenders to "forceplace" insurance on behalf of a borrower and to recover reasonable costs incurred in purchasing the insurance. We believe this requirement will help ensure that flood insurance coverage is purchased on properties in special flood hazard areas and will increase overall compliance with the NFIP, without adding excessive regulatory burden. Nonetheless, the subcommittee may wish to consider other ways to equitably allocate the responsibility for forceplacing insurance that would involve, for example, insurance companies, local governments or local offices of FEMA. To clarify that this section does not apply to a situation where the original borrower has sold the loan and has no other relationship with the borrower, we suggest language to clarify that the note holder is the party responsible for forceplacing the insurance.

Section 206 amends section 10 of the Federal Deposit Insurance Act (FDIA) to require that the flood insurance requirements be reviewed as part of each scheduled on-site examination. Under subsection (d)(1) of section 10, the agencies are required to conduct annual safety and soundness examinations of certain institutions. However, consumer compliance examinations, which address flood insurance, are excluded from those requirements under subsection (d)(6).

Our compliance examination program ensures compliance by savings associations with the flood insurance purchase requirements. Our program emphasizes regulatory areas of greatest risk and sensitivity. It also concentrates on the role that the association's management should play in effectively administering its compliance responsibilities, including those related to the flood insurance requirements. Thus, our program enables us to allocate examiner resources to those institutions, and to areas within those institutions, that pose the greatest risk and supervisory concern. As indicated earlier, poorly performing institutions receive compliance examinations on an annual or more frequent basis. We believe our current examination approach provides us with the necessary flexibility to effectively exercise our supervisory responsibilities. Therefore, we prefer that the bill not contain a specific examination requirement for flood insurance.

If the proposed requirement to include a review of flood insurance compliance as part of each scheduled on-site examination remains intact, then on a more technical level we suggest language to clarify that this review be included within the scope of each scheduled on-site *compliance* examination. Section 10 of the FDIA distinguishes between safety and soundness and compliance examinations and we would prefer to continue to keep flood insurance as part of our compliance program.

Section 207 provides that a lender found to have a pattern or practice of flood insurance violations is to be assessed a civil money penalty of not more than $350 for each violation, not to exceed $100,000 per year. It also authorizes the agencies to take any necessary remedial action when a lender falls short of regulatory compliance and has not shown measurable improvement in compliance after the imposition of civil money penalties.

Our policy is to ensure that prompt, fair, and firm action is taken to correct violations of the laws and regulations we enforce. We already have a number of enforcement tools available ranging from moral suasion to formal enforcement actions, such as cease and desist orders. For example, we have specific authority under the FDIA (12 USC 1818) to initiate an enforcement action for a violation of any law or regulation and the power to assess civil money penalties. Therefore, we believe our existing enforcement tools are sufficient to ensure compliance with the flood insurance requirements.

We also believe that supervisory enforcement of savings associations is most effective when we have discretion to determine which of the various remedies available to effect compliance is best suited to the institution. Therefore, we suggest that any penalty or corrective action provisions be discretionary, not mandatory.

CONCLUSION

This year's devastating floods in the Mississippi Valley tragically serve as the most recent example of the need for an effective national flood insurance program. OTS is committed to fulfilling its responsibilities under the NFIP and to ensuring regulatory compliance by savings associations. We believe the program is beneficial to the thrift industry and the Nation as a whole. We also believe compliance by the lending community demonstrates sound business practice as well as regulatory compliance.

We are always prepared to provide assistance to achieving the goals and objectives of the NFIP by continuing to work with Congress, our fellow Federal financial regulatory agencies and the thrift industry.

COMMENTS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC RESPONSIBILITY UNDER CURRENT LAW

Under the Flood Disaster Protection Act of 1973 (FDPA), the FDIC has promulgated regulations (12 CFR, Part 339) which require FDIC-supervised financial institutions to determine whether improved property securing a loan is located in a special flood hazard area and whether the property is located in a community that participates in the National Flood Insurance Program (NFIP). If it is determined that the property meets these conditions, regulated financial institutions may not make, increase, extend or renew any loan secured by improved real estate or a manufactured home if the property is located in a special flood hazard area where the community participates in the NFIP, unless flood insurance is purchased.

In addition, requisite notices must be provided to the borrower concerning the flood hazard status of the property and eligibility for disaster relief assistance from the Federal Emergency Management Agency (FEMA) in the event of damage to the property caused by flooding whether or not the community is participating in the NFIP. If the security is located in a special flood hazard area and flood insurance is not available because the community is not participating in the program, it is not eligible for government guaranteed loans, such as FHA, VA and SBA loans.

Enforcing compliance with the FDPA by FDIC-supervised institutions is an integral part of the FDIC's compliance examination program. In the flood insurance examination process, FDIC examiners review and assess an institution's applicable policies, procedures and internal controls—particularly the methods used by the institution to make the flood hazard determination. Examiners also review the institution's policies and procedures to ensure that they provide proper notification to the borrowers and to ensure that sufficient insurance coverage remains in effect for the term of the loan.

Examiners also may offer appropriate information and technical assistance, thereby helping institutions to understand their obligations under the flood insurance regulations and the FDIC's enforcement role. After the examination is completed, the appropriate FDIC Regional Office follows up on the examination findings to assure that necessary corrective actions are taken by the institution.

The FDIC normally takes increasingly stringent administrative actions until banks comply with the applicable corrective actions identified by the examination process. The FDIC's available enforcement tools include assigning unsatisfactory ratings, entering written memoranda of understanding, and issuing cease-and-desist orders and imposing civil money penalties.

Because determining an institution's compliance with flood insurance and other consumer protection laws is a complex and important part of FDIC's compliance examinations, the FDIC has developed a force of examiners who specialize in compliance examinations. These specialized compliance examinations, however, are not always conducted simultaneously with scheduled safety and soundness examinations. For this reason, section 206 of the bill which mandates that Federal banking agencies check compliance with flood insurance requirements "during each scheduled onsite examination" should be changed to require a determination during each scheduled on-site examination where compliance with flood insurance requirements is evaluated.

S. 1405 AND DEFICIENCIES UNDER CURRENT LAW

The existing flood insurance program has been criticized in that it does not: 1) apply to all mortgage lenders; 2) provide any mechanism for monitoring the maintaining of insurance coverage by borrowers when loans are sold and purchased on the secondary market; 3) assure accurate, up-to-date and readable maps and other information for institutions to determine flood hazard areas; 4) provide incentives for borrowers to obtain flood insurance other than by the requirement of the law; and 5) result in sufficient coverage of mortgaged properties in flood hazard areas. S. 1405 attempts to address many of these deficiencies.

S. 1405 would mandate Federal Financial Institutions Examination Council (FFIEC) interagency involvement with flood insurance program policy decisions of FEMA and the Federal Insurance Agency (FIA), as administrators of the NFIP. Such formalized interaction should result in improved coordination, education, and understanding between bank regulators and the governmental entities responsible for implementing flood insurance programs. This should facilitate better implementation and enforcement of the flood insurance laws.

COVERAGE

The bill does not directly cover all mortgage lenders. Mortgage bankers, mortgage companies and similar lenders are not "regulated lending institutions" as defined in the bill, but are responsible for significant mortgage loan activity. However, the bill does contain provisions which would place pressure on these unregulated institutions to comply with flood insurance requirements. "Regulated lending institutions" and "Federal agency lenders" would be bound by flood insurance program requirements not only on mortgage loans they originate but on loans they purchase. Thus, unregulated mortgage lenders which, as a group, often sell their loans in the secondary market have more incentive to assure that the loans meet flood insurance requirements in order to improve their marketability. By increasing the incentives for unregulated lending entities to meet the requirements of flood insurance laws, S. 1405 should improve their compliance.

Under S. 1405, lending institutions and Federal agency lenders must notify a borrower that a securing property is in an identified flood area and that flood insurance is required before "making, extending, increasing or renewing" a loan. The FDIC views this language as an improvement over prior versions of flood insurance legislation which covered "transfers" of loans.

As this subcommittee knows, the FDIC frequently resolves failed financial institutions through purchase and assumption transactions where an acquiring institution takes some or all of the assets from the failed institution. While the language of S. 1405 does not appear to apply to the transfer of a failed institution's assets by the FDIC as receiver to an acquiring institution, the subcommittee might want to consider providing an explicit exemption for such transactions. Of course, the FDIC's transferee would still be prohibited from making, extending, renewing or increasing acquired loans without meeting the flood insurance requirements.

In a typical purchase and assumption transaction, a provision requiring the review of all loans of a failed institution could require the FDIC, in its receivership capacity, to review thousands of loans of a failed institution before it could sell or transfer them to the acquiring institution. Often purchase and assumption transactions take place over a period as short as a few days. In these situations, it would not be feasible for the FDIC to review the large numbers of assets of the failed institutions in such a short period of time. Reviewing individual loans in this context could increase the delay and expense of the resolution of a failed institution.

A similar clarification may be necessary to ensure that the FDIC in its receivership capacity may rely on a previous determination of whether real property securing such loan is in a special flood or erosion hazard area under section 205 of the bill if it increases, renews or services a loan in the receivership.

ESCROW

Compliance with flood insurance statutes would be strengthened by the provisions of S. 1405 that require financial institutions to escrow flood insurance payments if they escrow other items such as taxes and casualty insurance premiums. While this provision increases the likelihood of continued coverage, it would appear that the efficacy of the provision concerning escrow of flood insurance payments could still be severely compromised by the frequency of mortgage servicer turnover. If a purchasing or assuming mortgage servicer does not practice escrow collection, the insurance coverage could lapse without detection, at least until such time as it would be sold on the secondary market when intermediaries such as FNMA and FHLMC would require proof of coverage.

DETERMINATIONS OF THE NEED FOR FLOOD INSURANCE

S. 1405 mandates penalties and corrective actions against financial institutions for failure to require flood insurance, escrow payments, or notify borrowers. As the subcommittee knows, the FDIC is already empowered under the Federal Deposit Insurance Act to issue corrective orders and levy civil money penalties for violations of laws for which it has enforcement responsibility. While a fine may serve to improve compliance among supervised institutions, it does not address the difficulty financial institutions have in making flood hazard determinations from maps which are constantly changing and are extremely difficult to read.

Due to the complex nature of the Flood Insurance Rate Maps and the number of amendments or revisions, third parties are generally hired by lending institutions to make such determinations. While S. 1405 would allow the lender to rely on third party guarantees of accuracy, there is no known licensing authority over the Map Determination Companies who guarantee the accuracy of determinations. In addition, licensed appraisers are generally not trained to make flood determinations with guaranteed accuracy.

Rather than forcing institutions to contract out their flood insurance determinations, the FDIC believes that consideration should be given to placing primary responsibility for flood hazard determinations upon a central agency, such as FEMA, which develops, amends, updates and disseminates the maps and community status directories needed for compliance with the NFIP under current law. Rather than charge for maps and materials, the agency could simply charge for the determination itself.

Consideration should also be given to the concept of a central data base operation, accessible by toll-free telephone or other method, to institutions, borrowers, and third parties that could guarantee accurate flood hazard determinations. It may well be that the costs of such an operation—which would provide accurate flood hazard determinations, community ratings and status at the outset—could be offset by reduced costs for publication, notification, and dissemination of the voluminous materials currently necessary to keep affected parties apprised of NFIP requirements.

CONCLUSION

The FDIC generally supports the objectives of the National Flood Insurance Program (NFIP) and favors improvements which would contribute to improved compliance. Yet, improved compliance may require additional regulatory burdens on financial institutions and borrowers. We welcome meaningful changes which could enhance the effectiveness of the NFIP and we look forward to working with the Congress to achieve this goal in the least burdensome method possible.

PUBLIC POLICY ISSUE PAPER FOR THE NATIONAL PERFORMANCE REVIEW

NEW DEVELOPMENT IN DEEP FLOODPLAINS IS BAD PUBLIC POLICY: THE NATOMAS BASIN EXAMPLE

WRITTEN BY GARY W. ESTES

CITIZEN FROM AUBURN, CALIFORNIA

EXECUTIVE SUMMARY

At issue are Federal policies which *INCREASE* the risk to public health and safety from deep flooding. This increased risk is caused by encouraging more people to live and more buildings to be constructed in deep floodplains, such as Natomas Basin. This paper argues that to knowingly increase the risk to public health and safety is bad public policy.

The flood protection programs of the U.S. Army Corps of Engineers (Corps) and the National Flood Insurance Program administered by the Federal Emergency Management Agency (FEMA) work together to *increase* the number of people and buildings at risk of catastrophic flooding. This result is caused by the Corps building flood control structures, like levees and dams, creating a false sense of safety. Once a floodplain is protected from the 100-year flood by such structures, then urban development can proceed without any restrictions. FEMA compounds this false sense of safety by making flood insurance *available* to the people who move into the "protected" floodplain, but *not requiring* flood insurance. The Corps and FEMA are encouraging floodplain development by offering the Federal Government's "seal of approval" that floodplains are safe for development.

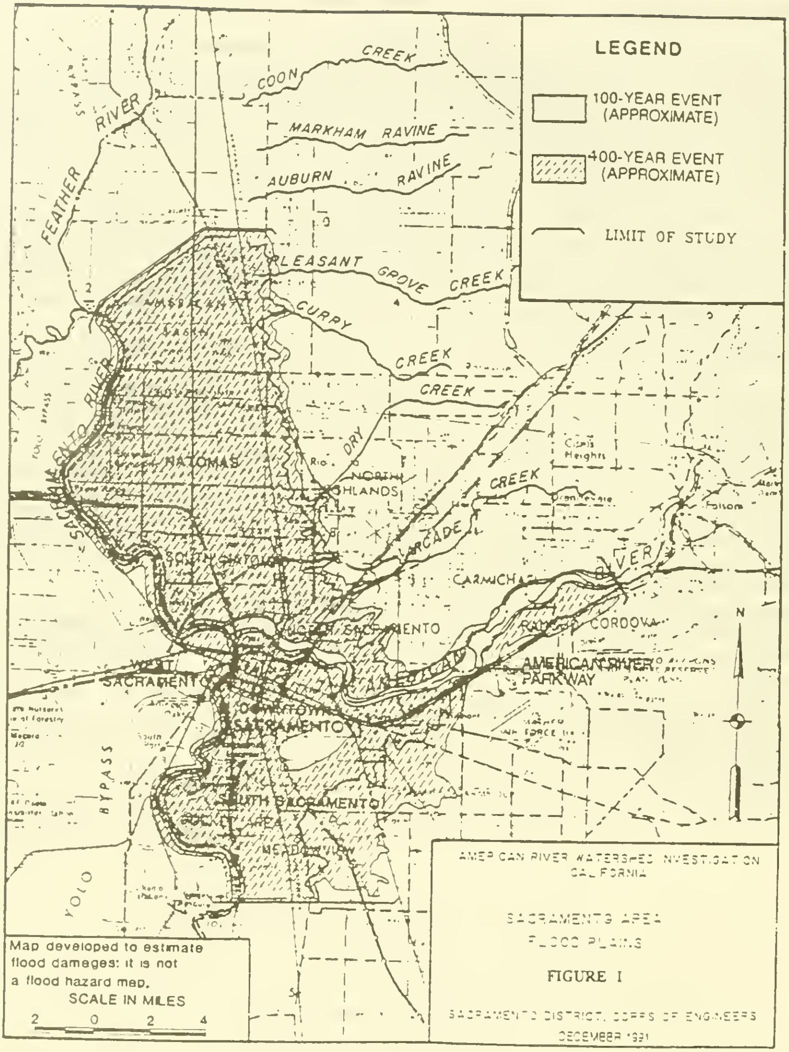
An example of this public policy gone wrong is the Natomas Basin located in the Sacramento (California) floodplain. The 55,000 acre Natomas Basin already has over 31,000 people and 13,730 structures located on 7,260 acres at risk of flooding to depths of 8 to 23 feet. The structures, plus the contents, are valued at $2.351 *billion* with flood damage to them estimated at $1.592 *billion*. By protecting these people and buildings, the remaining 47,622 acres of agricultural and vacant land are opened to development. This undeveloped land area totals 75 square miles which is *LARGER* than the District of Columbia (69 square miles).

Three local governments control land use decisions in Natomas Basin. Proposed urban development plans by these jurisdictions would allow over 170,000 more people and over 80,000 new homes to reside in Natomas Basin. The result would equal a city in excess of 200,000 people living in over 93,000 homes. The value of all structures and contents is estimated at over $15 *billion* with potential flood damage estimated at $8 to $10 *billion*.

How much development has been encouraged in floodplains throughout the United States by existing public policy? How many times will this be repeated in the future across America? How many more disastrous floods must occur before we act? The Great Flood of 1993 shows the consequences of the current public policy. Now is the time to establish a decisive policy opposing Federal encouragement of urban development in deep floodplains.

This new policy can be implemented by enacting the same limitations on Federal actions which once encouraged development of coastal barrier areas. Enacted in 1982, the Coastal Barrier Resources Act (COBRA) prohibits Federal flood insurance for new development and restricts Federal financial assistance to designated coastal barrier areas. The same restrictions should apply to deep floodplains. Such restrictions applied to Natomas Basin will prevent:

- adding over 170,000 people living at risk of deep flooding,
- adding over $13 *billion* of property at risk of destruction from deep flooding,
- increasing the future cost of government to recover from a catastrophic flood disaster,
- shifting accountability for the consequences of local land use decisions to the Federal Government, and
- taxpayers subsidizing profits estimated at $5 to $10 *billion* for land speculators and developers.


LEGEND
▭ 100-YEAR EVENT (APPROXIMATE)
▨ 400-YEAR EVENT (APPROXIMATE)
LIMIT OF STUDY
COON CREEK
MARKHAM RAVINE
AUBURN RAVINE
FEATHER RIVER
PLEASANT GROVE CREEK
CURRY CREEK
DRY CREEK
ARCADE CREEK
NATOMAS
SACRAMENTO RIVER
NORTH HIGHLANDS
CARMICHAEL
RANCHO CORDOVA
AMERICAN RIVER
AMERICAN RIVER PARKWAY
NORTH SACRAMENTO
SOUTH NATOMAS
WEST SACRAMENTO
DOWNTOWN SACRAMENTO
SOUTH SACRAMENTO
POCKET AREA
MEADOWVIEW
YOLO BYPASS
Citrus Heights
Folsom
N
Map developed to estimate flood damages: it is not a flood hazard map.
SCALE IN MILES
2 0 2 4
AMERICAN RIVER WATERSHED INVESTIGATION
CALIFORNIA
SACRAMENTO AREA
FLOOD PLAINS
FIGURE I
SACRAMENTO DISTRICT, CORPS OF ENGINEERS
DECEMBER 1991

FOREWORD

On March 3, 1993, President Bill Clinton announced the National Performance Review to the Nation. Vice President Al Gore will lead this effort to bring Total Quality Management (TQM) concepts to all parts of our Nation's government. The National Performance Review will focus six months of intense effort to evaluate the performance of government. Every aspect is open for evaluation. The President stated the Review will ". . . challenge the basic assumptions of every program asking: Does it work? Does it provide quality service? Does it encourage innovation?" He observed that many programs began for good reasons, but times have changed. He continued, "If there is something the Federal Government should stop doing, we will try to make changes."

President Clinton and Vice President Gore asked citizens to communicate their suggestions for improving our Federal Government. In response to their invitation, this issue paper is offered to focus attention and initiate dialogue regarding a flawed public policy. This paper identifies problems and offers possible solutions, though the problem definitions and solutions will likely change as the dialogue continues.

GEOGRAPHIC LOCATION[1]

Our story begins in the floodplain of Sacramento, California. Formed by the confluence of the Sacramento River and American River, the Sacramento floodplain contains 116,000 acres (181 square miles). "To the conventional wisdom that one ought never to build on a floodplain, California has responded with its capital city."[2]

In the part of the Sacramento floodplain known as Natomas Basin, over 31,000 people have been allowed by Federal, California, and local governments to build their homes in a deep floodplain. Flood depths range from 8 to 23 feet in the existing developed areas. This 55,000-acre man-made basin was created in 1914 to "reclaim" wetlands and floodplain lands for agriculture.[3] The entire Natomas Basin (86 square miles) covers an area *larger* than the District of Columbia (69 square miles). Approximately 13 percent (7,260 acres) of the land is in urban use and the remaining 87 percent (47,622 acres) consists of agricultural and vacant land available for development.

Figure 1 shows the Sacramento floodplain which could be flooded by a 100-year and 400-year flood event.[4] The reader can see the rivers, creeks, and land areas comprising the 116,000 acre floodplain. The Sacramento River is the western boundary of the floodplain. Flowing north to south the Sacramento River passes Natomas, West Sacramento, Downtown Sacramento, and South Sacramento on its way to the Pacific Ocean through San Francisco Bay. The American River begins its journey in the Sierra Nevada Mountains flowing east to west joining the Sacramento River just south of Natomas Basin.

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[1] Much of the information in this paper was obtained from the *American River Watershed Investigation, California: Feasibility Report* dated December 1991. The Report was prepared by the U.S. Army Corps of Engineers, Sacramento District, and issued jointly with The Reclamation Board, State of California. It consists of Part I: Main Report and Part II: Environmental Impact Statement/Environmental Impact Report (EIS/EIR) with Appendixes A through T. This Report will be referenced as *Corps Feasibility Report*.

[2] John McPhee, *Assembling California*, Farrar, Straus and Giroux, (New York, 1993), page 177.

[3] *Corps Feasibility Report*, EIS/EIR, page EIS 7–12.

[4] The 100-year floodplain is approximately 110,000 acres and the 400-year floodplain is approximately 116,000 acres. Source: *Corps Feasibility Report*, Appendix C, page C–14.

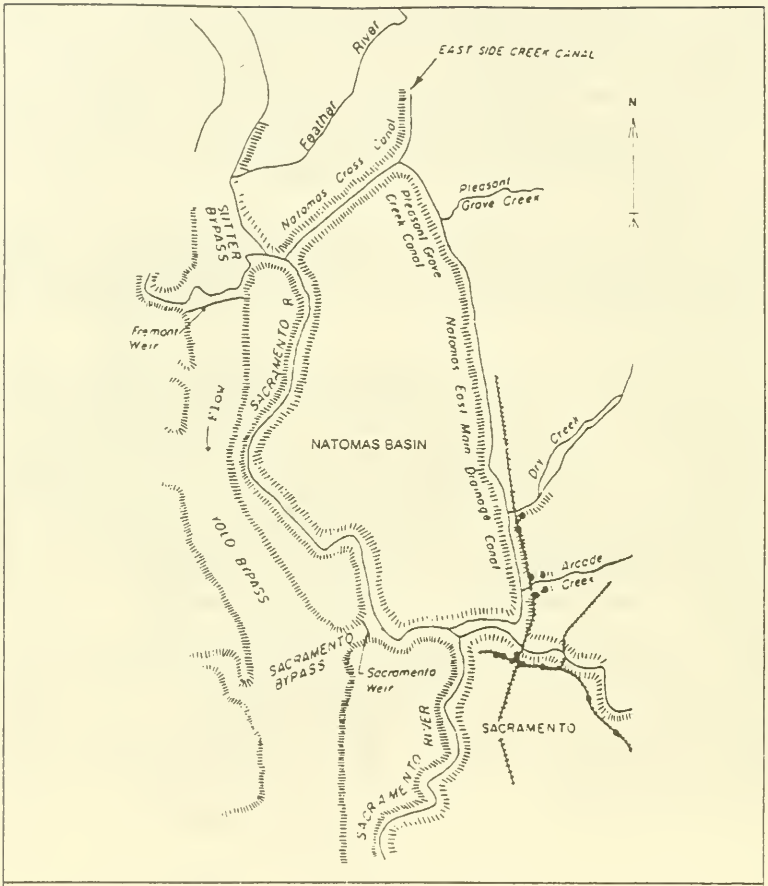
Feather River
EAST SIDE CREEK CANAL
N
Natomas Cross Canal
Pleasant Grove Creek
Pleasant Grove Creek Canal
SUTTER BYPASS
Fremont Weir
SACRAMENTO R.
FLOW
NATOMAS BASIN
Natomas East Main Drainage Canal
Dry Creek
Arcade Creek
YOLO BYPASS
SACRAMENTO BYPASS
Sacramento Weir
SACRAMENTO RIVER
SACRAMENTO

FIGURE 2

SACRAMENTO AREA

EXISTING FLOOD CONTROL STRUCTURES

LEGEND: ||'||| Levees
● Floodgate
—+— Railroad

Adapted from U.S. Army Corps of Engineers American River Watershed Investigation, California Feasibility Report, (Sacramento District December 1991), Main Report, Plate 2

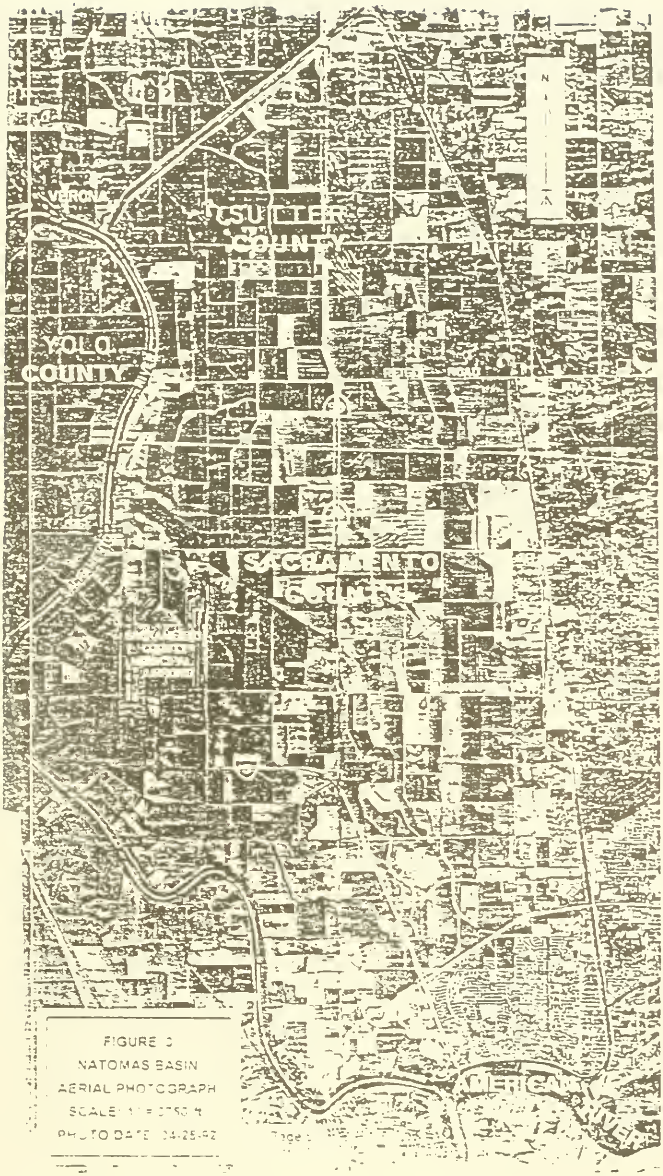
VERONA
SUTTER
COUNTY
YOLO
COUNTY
SACRAMENTO
COUNTY
AMERICAN
RIVER
N

FIGURE 3
NATOMAS BASIN
AERIAL PHOTOGRAPH
SCALE: 1" = 2750 ft
PHOTO DATE: 04-25-92

Figure 2 shows the man-made levees totaling over 41 miles creating Natomas Basin. Some 20.6 miles of canals plus another 20.6 miles of the Sacramento and American Rivers encircle the Basin. Water marks its boundaries. The north boundary is the Natomas Cross Canal. The east boundary is made of the Pleasant Grove Creek Canal and the Natomas East Main Drainage Canal. The south boundary is made of the Sacramento River and American River joining south of Natomas. The west boundary is the Sacramento River.

To give the reader an understanding of what Natomas Basin looks like, Figure 3 is an aerial photograph of the area. The expansive agricultural and vacant land in the large northern portion can be contrasted with small urbanized development in the southeastern corner between Interstate 80 and the American River.

DEVELOPMENT IN NATOMAS BASIN

Created by constructing drainage canals and 41 miles of encircling levees, Natomas Basin was considered "protected" from the 100-year flood. Like elsewhere in America, urban development was proposed to replace farming in Sacramento's floodplain. When officials of Sacramento City and Sacramento County decided to approve urban development, it made sense at the time as Natomas Basin is flat land and a 15 to 30 minute drive to downtown Sacramento. Since the level of flood protection met the minimum Federal standards set by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program (NFIP), urban development proceeded. By 1990 over 31,000 people called this area home. Over 13,730 homes, businesses, industries, and public buildings were built over 7,260 acres in Natomas Basin. These buildings and their contents have an estimated value exceeding $2.351 *billion*.[5]

In February 1986 a major Pacific Ocean storm brought record breaking rainfall to Northern California causing the Sacramento and American Rivers to reach new record high flows. The Natomas Basin levees held, but weaknesses were found. FEMA contracted with the Corps of Engineers to evaluate the Sacramento area flood control system. With new record river flows plus new FEMA safety standards for levees, Natomas Basin levees were downrated from 100-year flood protection to ranges of 40-year to 70-year protection.

Without going into the details, urban development stopped in Natomas Basin after the 1986 storm because the FEMA 100-year flood control standard was no longer met. Without 100-year flood control, FEMA would allow development to continue only if the first habitable floor is built one foot above the height of the 100-year flood elevation. Because of the potential high flood depths of 8 to 23 feet in Natomas Basin, it was impractical and uneconomical for residential buildings to meet the one foot standard. Residential development stopped.

Projects supported by the Federal, California, and local governments have worked to strengthen the Sacramento River levees. Projects to strengthen other levees around Natomas Basin are progressing. Once the minimum FEMA 100-year flood control standard is restored or exceeded, urban development can continue on the 47,622 acres (75 square miles) of vacant and agricultural land in Natomas Basin.

ACCOUNTABILITY FOR DEVELOPMENT CONSEQUENCES

Who will be held accountable for the consequences of further urban development in Natomas Basin? Who is responsible for promoting such urban development? Who is responsible for declaring Natomas Basin safe for development? In the minds of land speculators, developers, and the local government officials of Sacramento City, Sacramento County, and Sutter County, further urban development is the "Manifest Destiny" for Natomas Basin.

After 100-year flood protection is restored to Natomas Basin, FEMA will give its "seal of approval" and the requirement to build the first floor above the 100-year flood elevation will be removed. Development can continue. To local promoters and decision-makers, this means the flood risk has been determined by FEMA to be acceptable to the Federal Government. FEMA's acceptance allows the flood risk caused by approving further development to be shifted from land speculators, developers, and local government taxpayers to Federal taxpayers. The land speculators and developers make their $5 to $10 *billion* of profits and leave the disaster cleanup bills for others to pay. This is wrong. The consequences of local land use decisions should stay with those promoting and making the decisions.

The accountability for land use decisions promoted by land speculators and developers and approved by local government officials is lost because the consequences are shifted to the Federal Government. Accountability for decisions will only occur when institutions and individuals making decisions are held accountable for the resulting consequences. Without such ultimate accountability for their actions, land speculators and developers will pressure and encourage local government officials to allow further development in Natomas Basin. Continuing to shift the accountability for development consequences to the Federal Government, and ultimately Federal taxpayers, is bad public policy.

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[5] *Corps Feasibility Report*, Appendix C, Table III–3 on page C–14, Table III–5 on page C–18, Table III–6 on page C–19, and page C–29. Figures are existing conditions as defined on each table.

How can the accountability for local land use decisions be left with the decisionmakers? The answer is found in the Coastal Barrier Resources Act (COBRA) enacted in 1982. COBRA prohibits new development in designated coastal barrier areas from receiving flood insurance and other Federal financial assistance. By removing the Federal encouragement to development (i.e., flood insurance and other Federal financial assistance), land speculators, developers, and local government officials are held totally accountable for the consequences of their land use decisions. Development is still allowed in the floodplain, but the Federal Government does not provide financial assistance nor does it provide flood insurance.[6] All the risks and profits remain with those land speculators, developers, and local government officials who are willing to invest their money in floodplain development. The buck stops at the local level, where it belongs.

INCREASING THE RISK TO PUBLIC HEALTH AND SAFETY

Let's explore the possible consequences from further urban development in Natomas Basin. In the Corps of Engineers report on Sacramento flood hazards, the Corps identified THE flaw in all the flood control alternatives examined for protecting Sacramento: *All flood control alternatives increase the risk to public health and safety.* Why? Because the number of people and buildings exposed to flooding will increase due to urban development in floodplains. The Corps states:

> "Finally, under existing local and Federal floodplain management regulations, all of the alternatives carried forward in this report would provide a sufficient level of protection to permit development to proceed in Natomas and elsewhere in the floodplain. This development would significantly increase the number of people and the amount of property exposed to flooding and would increase the losses produced by an uncontrolled event."[7]

The most disturbing results from Natomas Basin flooding are the potential for significant loss of life, the massive disruption of peoples' lives, and the massive destruction of buildings and their contents. Over 31,000 people call this area home.

> "Loss of life could be significant depending on the warning time given to residents to evacuate the basin. Advance warning would be essential because the breach would be proximately located to the urbanized portion of the basin. Floodwaters would thus reach vital transportation corridors relatively quickly, and eventually render the affected freeway and local roadway segments impassable."[8]

Proposed urban development plans by local governments would add over 170,000 people and over $13 *billion* of new buildings and their contents in Natomas Basin. The total population would exceed 200,000 and property value exceed $15 *billion*. Where do 200,000 people who lived in 93,000 homes find housing during and after the flood? What magnitude of human and economic disaster will befall the Sacramento area when a flood inundates a fully urbanized Natomas Basin? To answer this question let's compare the Great Flood of 1993 to a future flood in Natomas Basin with 200,000 people and over $15 *billion* worth of structures and contents. Table A shows the comparison:

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[6] Federal Emergency Management Agency, *Mandatory Purchase of Flood Insurance Guidelines*, FEMA 186, Effective on July 13, 1989, page 24.

[7] *Corps Feasibility Report*, EIS/EIR, page EIS 1–8.

[8] Sacramento Area Flood Control Agency, *Revised Draft Environmental Impact Report for the Revised Natomas Area Flood Control Improvement Project*, (Sacramento, Mar. 1993), page 5.3–1.

Table A

Comparison of Great Flood of 1993 to Future Flood of Urbanized Natomas Basin[9]

	Great Flood of 1993	Future Flood Natomas Basin
Deaths	45	15
People Evacuated	36,410	200,000
Homes Damaged	45,000	93,000
Total Damages	$12 to $15 Billion	$8 to $10 Billion
Property Damage	$6 to $7 Billion	$8 to $10 Billion
Crop Damage	$6 to $8 Billion	0
Square Miles Flooded	31,250	86

The comparison is striking. In the Midwest the flood damage and destruction is spread over 31,250 square miles beside rivers stretching hundreds of miles. In Natomas Basin the destruction is concentrated in 86 square miles. It is ironic to compare the Midwest flood damage to that of a fully developed Natomas Basin. Crop damage is half of the Midwest damages because flooding occurred during the growing and planting season. Property damage is the entire source of damages in Natomas Basin.

The estimated property and crop damage, as of August 6, produced by the Great Flood is $12 to $15 *billion* spread over 31,250 square miles compared to an estimated $8 to $10 *billion* of property damage over just 86 square miles in Natomas Basin. Twice as many homes would be damaged in Natomas Basin (93,000) compared to the Midwest (45,000 as of August 6). Why would we knowingly create a potential catastrophe of this magnitude?

SEVERITY OF FLOOD DAMAGE

Why does flooding in Natomas Basin cause so much destruction? The answer is found in its physical features:

1. During flood events, river levels are higher than the ground level inside the Basin.
2. Rivers or canals surround the Basin on all sides.
3. Levees surround Natomas Basin on all sides.
4. Levees are 15 to 20 feet higher than the inside land area.
5. Natomas Basin has no drain.
6. Low lying lands inside the Basin are lower than surrounding land.
7. Flood waters fill the Basin whenever levees fail.

Together these physical features make Natomas Basin a disaster waiting to happen. Whenever a levee breaks, flood water could fill the Basin. Why? Natomas Basin is a 55,000-acre bathtub and swimming pool combined, but it has no drain! The 15 to 20 feet high levees form the "bathtub" walls. The land inside is the "bathtub" bottom, but the bottom is not flat. The bottom is like a swimming pool with the deep end located in the middle. From the deep center the pool gets shallower as one moves toward the levees.

In Figure 4 the land area shown as white (over 23 feet) is the lowest part of Natomas Basin. The next lowest land elevation is the land area marked 18 to 23 feet. Once flood waters get inside, it cannot get out until the river level goes down allowing some water to drain out the break in the levee. In these two low lying areas, water will remain until pumped out or it evaporates. These two areas are 5 to 10 feet *lower* than the land around them and would form a 17,700 acre (27.6 square mile) pond. It would cover 32 percent of the land area.

Figure 4 shows the land area covered by the estimated potential flood depths for Natomas Basin. The flood depths are based upon a flood elevation of 33 feet derived from the Flood Insurance Study and Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) in March 1993. Figure 5 shows the estimated flood depths, the number of acres and square miles by flood depth, and the percentage of land area covered by flood depth.

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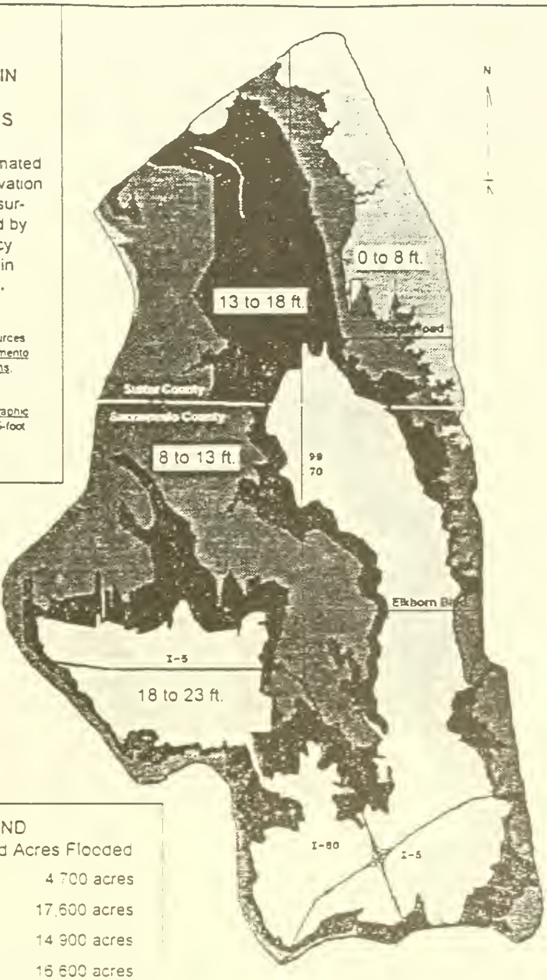
[9] See Appendix B for sources.

FIGURE 4 NATOMAS BASIN ESTIMATED FLOOD DEPTHS

Flood depths are estimated from 33-foot flood elevation derived from Flood Insurance Rate Map issued by the Federal Emergency Management Agency in March 1993.

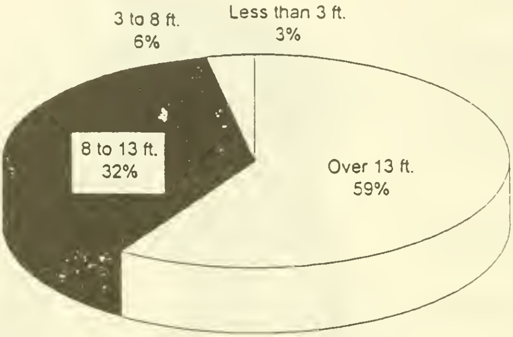
Map developed from:
California Dept. of Water Resources Map of American River - Sacramento Estimated Potential Flood Depths, June 1993

U.S. Geological Survey, Topographic Maps (7.5 Minute Series) with 5-foot contour interval, various years


N
13 to 18 ft.
0 to 8 ft.
Sutter County
Sacramento County
8 to 13 ft.
99
70
Elkhorn Blvd
I-5
18 to 23 ft.
I-80
I-5

LEGEND
Depth of Water and Acres Flooded

☐	0 to 8 feet	4,700 acres
▨	8 to 13 feet	17,600 acres
■	13 to 18 feet	14,900 acres
☐	18 to 23 feet	16,600 acres
☐	over 23 feet	1,100 acres



Depth of Flood Water (feet)	Percent of Total Land	Land Area (acres)	(sq. miles)
0 to 3	3.	1,400	2.
3 to 8	6.	3,300	5.
8 to 13	32.	17,600	28.
13 to 18	27	14,900	23.
18 to 23	30.	16,600	26.
over 23	2.	1 100	2.
Totals	100.	54,900	86.

FIGURE 5
NATOMAS BASIN
ESTIMATED FLOOD DEPTHS

Percentage, acreage and square mile measurements of estimated flood depths

The depth of flood water and the duration of flooding have a significant impact upon property damage. Together flood depth and duration have a significant impact on property damage in Natomas Basin. The Corps of Engineers estimated flooding will last for 30 days. This is an extraordinary amount of time when compared to the flood duration of less than 5 days for other parts of the Sacramento floodplain. The Corps also estimated damages to buildings and contents would reach 100 percent where flood depths exceed 13 feet.[10] Figure 5 shows that approximately 59 percent of Natomas Basin's land area could flood to depths exceeding 13 feet and 32 percent could flood to depths of 8 to 13 feet. A total of 91 percent of the land area could flood to depths exceeding 8 feet.

The Corps estimated 13,730 structures and the contents are valued at $2.351 *billion* and would suffer flood damage estimated at $1.592 *billion*, which is over 67 percent of the market value. "Natomas is the only reach (part the Sacramento floodplain) where flood damages would exceed 50 percent of the market value of the structure."[11]

Even if a higher level of flood control is provided, the depth and duration of flooding in Natomas Basin is the same. Whenever the next larger flood breeches the levees, Natomas Basin fills with water. The Corps of Engineers observed:

> "Flooding from levee failure would be similar in Natomas . . . *regardless of the frequency* of the flood event because (1) the ground elevation adjacent to the levees in these locations is lower than the water surface in the river, and (2) the volume of water in the American River . . . and Sacramento River in the case of Natomas . . . *would fill* the floodplains to similar depths."[12]

To illustrate the Corps point, Figure 6 is a Natomas Basin levee profile along the American River. It shows the highest river water level during the February 1986 storm was 13 feet above the ground level in Natomas Basin. If the levee had failed with the river at the highest level, Natomas Basin could have filled up. As shown in Figure 6, a single story house would have been completely covered by water.[13]

The Corps of Engineers concluded that the Natomas Basin will experience severe flooding whenever the flood control levees are breached. The only thing which changes is the probability, or frequency, of when flooding will occur. Severity of flooding in Natomas Basin is the same no matter the frequency of flood. In other words, severity of flooding in Natomas Basin is the same no matter the probability, or probable frequency, of flooding.

---

[10] "For the Natomas reach, duration is *30 days*, and the average velocity is less than 0.5 feet per second. *Duration has a significant effect on the flood damages for this area.* Damages to structure and content for each land use category [i.e., residential, commercial, industrial, public, and mobile home] were set at *100 percent* for depths greater that [sic] *13 feet*. For the remaining reaches in the floodplain, duration is less than 5 days, and the average velocities range from 0.5 to 5 feet per second. Neither duration nor velocity had any significant effect on damages." Source: *Corps Feasibility Report*, Appendix C, page C–22, (emphasis added).

[11] *Ibid.*, page C–25.

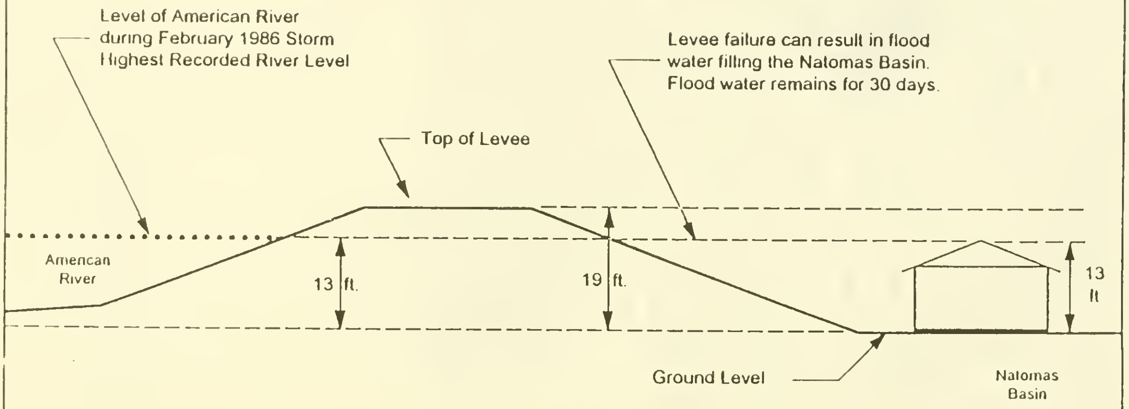
[12] *Ibid.*, Main Report, page III–18, (emphasis added).

[13] Figure 6 is a graphic illustration of Natomas Basin flood depths and what this much water does to a single story house constructed on grade. Building on grade is the typical method used in much of California. The house is completely covered. Destruction is total for building and contents.

FIGURE 6 LEVEE PROFILE
NATOMAS BASIN
AMERICAN RIVER
RIVER MILE 1.5
LOOKING DOWNSTREAM

"Flooding from levee failure would be similar in Natomas . . . regardless of the frequency of the flood event because (1) the ground elevation adjacent to the levees in these locations is lower than the water surface in the river and (2) the volume of water in the American River . . . and Sacramento River . . . would fill the flood plains to similar depths."

SOURCE: U S Army Corps of Engineers, American River Watershed Investigation, California Feasibility Report, (Sacramento District, December 1991), Main Report, p III-18.


Level of American River
during February 1986 Storm
Highest Recorded River Level
Levee failure can result in flood
water filling the Natomas Basin.
Flood water remains for 30 days.
Top of Levee
American
River
13 ft.
19 ft.
13
ft
Ground Level
Natomas
Basin

Drawn from U S Army Corps of Engineers, American River Watershed Investigation, California Feasibility Report, (Sacramento District, December 1991), Appendix M, Chapter 2, Appendix M-2 A, Levee and Flood Profiles - Sections 5 through 9, Section 7.

PROBABILITY OF FLOODING

What is the probability of Natomas Basin flooding? To answer the question, consider an incident from the Great Flood of 1993:

> "For various points along the Mississippi, the Army Corps of Engineers has calculated the probability of floods of varying heights. The smallest probability they bothered to calculate was a '500-year flood'—one so unlikely it can be expected to happen only once in five centuries. . . . [A]t Hannibal, Mo., a 500-year flood was determined to be 30 feet, so the city built its new levee a foot higher, at 31. It was finished in April after two years of work, and when the waters rose in early July residents heaped three feet more of sandbags atop it. When the crest reached Hannibal, the river was at 32 feet." [14]

This incident helps us to understand the uncertainty of predicting and controlling flood events. Also it shows the confusion caused by the terms used to describe flood events. The Corps of Engineers calculates the probability of floods of varying heights, or volumes. Each calculated flood event has an estimated water height which is caused by an estimated water volume. As can be expected, greater volume results in greater height. As the volume of water increases, the probability decreases because larger floods occur less often.

To name different flood events, engineers use a shorthand description based upon the probability of when each flood event will occur. Engineers take historical records of past floods and apply statistical calculations to predict the probability or chance of flooding. For example, the "500-year flood" is the calculated flood of a certain volume or height which has a 1 in 500 chance of occurring in any year. The 500-year flood has a one-fifth of one percent (0.20 percent) of occurring in any year. Over 30 years the 500-year flood has a 6 percent chance of occurring during the 30 years. The "500-year flood" DOES NOT mean this size of flood will only occur once in 500 years. As can be seen from Table B, over 100 years the 500-year flood has a 18 percent chance of occurring while the 100-year flood has a 63 percent chance of occurring during the same 100 years.

The terms 500-year flood and 100-year flood can be misleading. Such floods may be experienced in any year. Since the National Flood Insurance Program was established, there have been numerous instances where communities have experienced two, and even three, 100-year or greater floods within a span of several years. A notable example is Pennsylvania in the 1970's where within five years after Tropical Storm Agnes (1972) battered the State another 100-year flood occurred.[15]

Table B presents the percent chance or probability of different flood events happening in any year and over various numbers of years. The chance of the 1 in 100 flood, or the 100-year flood, occurring over the life of a 30-year mortgage is 26 percent, or about one in four. The question for the homeowner is whether or not to purchase flood insurance. By contrast, during the term of a 30-year mortgage, there is only a 1 percent chance of suffering a fire loss.[16] What level of risk is acceptable? What level of risk is unacceptable?

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[14] Jerry Adler, "Troubled Waters," *Newsweek*, July 26, 1993, page 21.

[15] Federal Emergency Management Agency, *Mandatory Purchase of Flood Insurance Guidelines*, FEMA 186, Effective on July 13, 1989, p. 7.

[16] *Ibid.*

Table B

Percent Chance Of Floods Occurring Over The Years

Number Of Years	100-Year Flood (percent)	500-Year Flood (percent)
Any Year	1.0	0.20
30	26	6
50	39	10
75	53	14
100	63	18
200	87	33
400	98	55
500	99.34	63
1000	99.99	86
2000	99.99	98

CONGRESSIONAL RECOGNITION OF UNACCEPTABLE RISK

The unacceptable risk posed to public health and safety by further development in Natomas Basin was recognized in two Federal laws enacted in 1992. These two laws contained sections written to address Natomas Basin flooding issues. Each law and its legislative history talks specifically about Natomas Basin. Together these laws express the Congressional recognition of the unacceptable risk created by allowing further urban development of Natomas Basin.

First, in the Department of Defense Appropriations Act of 1992, the Secretary of the Army was authorized to construct the Natomas Basin levee improvement features proposed by the Corps of Engineers. However, a limitation was placed upon these levee improvements:

> ". . . provided that such construction does not encourage the development of deep floodplains."[17]

Second, in the Housing and Community Development Act of 1992 (H.R. 5334), changes were made to the National Flood Insurance Program (NFIP). A change was specifically designed to address Sacramento's flood insurance problems. Briefly, the legislation (a) created a new "flood restoration zone" for flood insurance rates, and (b) allowed the Federal Emergency Management Agency (FEMA) to establish floodplain management criteria for new construction in the flood restoration zone where flood depths exceed 5 feet. Speaking as the Chairman of the Senate Housing and Urban Affairs Subcommittee responsible for the legislation, former U.S. Senator Alan Cranston of California spoke on the floor of the Senate to clarify the intent behind the legislation:

> "The flood restoration zone is not intended to allow the development of undeveloped areas including the Natomas Basin area in Sacramento."[18]

These two laws recognize the unacceptable risk caused by further urban development in Natomas Basin. Congress has established limits on further development. However, local government officials are working to get around the limitations contained in these two laws. Their efforts appear to be close to success and urban development will continue to fill Natomas Basin. Before this happens, the Clinton-Gore Administration and Congress should act to change Federal law by prohibiting flood insurance from being available to new development and by removing other Federal financial assistance.

Such action was taken by Congress in October 1982 with the passage of the Coastal Barrier Resources Act (COBRA).[19] The law was enacted to restrict Federal Government actions that were encouraging the development of certain coastal barrier areas. Among the restrictions in COBRA, no new flood insurance coverage was provided for any new construction in designated coastal barriers after October 1, 1983. While COBRA does not prevent private financing and development, it limits financial assistance by Federal agencies on undeveloped coastal barriers. Similar legislation should be enacted to remove Federal encouragement of further urban development in Natomas Basin. Further details for legislation to achieve this end is presented in Appendix A.

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[17] Department of Defense Appropriations Act of 1992, Section 9159.

[18] *Congressional Record—Senate*, October 8, 1992, page S17910.

[19] 96 Stat. 1653, Public Law 97–348 (S. 1018), October 18, 1982.

SUMMARY OF PUBLIC POLICY ISSUE

The basic public policy issue is whether or not the Federal Government should encourage additional urban development in deep floodplains, such as Natomas Basin. The arguments against encouraging further development are based upon these beliefs and values:

- Government should reduce risk and protect the public health and safety, not increase such risks.
- Government should spend limited tax dollars protecting public health and safety, not waste dollars on projects increasing the risk to people and property.
- Predicting and controlling the forces of nature is subject to unacceptable error and mistake, not an activity government should depend upon for protecting public health and safety.
- The accountability for the consequences resulting from decisions should remain with the decision-makers responsible, not transferred to others.
- Each generation should think about the short and long term impacts of their actions, not leaving deficits and billion dollar blank checks to be paid for future flood disasters by future generations.
- Tax dollars should benefit the larger public good, not produce windfall profits for a few land speculators and developers.

The problems caused by allowing further urban development in Natomas Basin are:

1. The risk to human life and safety is increased by further urban development in Natomas Basin. Over 170,000 additional people could be added to the 31,000 already living there. What will be the level of human suffering when 200,000 people are flooded? Where does a city of over 200,000 people live when everything is under water for 30 days? How long will it take to rebuild? How many people will die?

2. The 55,000-acre Natomas Basin is a combined bathtub/swimming pool with no drain! Massive destruction of structures and the contents would result from flooding a fully urbanized Natomas Basin. Proposed urban development plans by local governments would increase the value of structures and contents to an estimated value of over $15 *billion*. The potential property damage is estimated at $8 to $10 *billion*. This amount is similar to the destructive Great Flood of 1993 (as of August 6, 1993). How much will the local, California, and Federal Governments pay for such a massive disaster relief effort? From where will the money come?

3. Flood depth, flood duration, and extent of destruction in Natomas Basin is the same no matter if the flood is a 100-year, 200-year, or 400-year event. Flood control structures create a false sense of security. Flood control structures for Natomas Basin only reduce the probability, or probable frequency, of flooding, not the severity of destruction. Instead of encouraging people to stay out of floodplains, government tries to predict and control the forces of nature. Why are we allowing more people and buildings to be placed in harms way when we know disaster will strike someday?

4. The accountability for flooding consequences caused by the decision to build in floodplains is transferred from local decision-makers to Federal taxpayers. How can local decision-makers be held accountable for their decisions when the resulting consequences are transferred to others?

5. By encouraging further development in Natomas Basin, Federal taxpayers are subsidizing profits for land speculators and developers who promote building in deep floodplains. Estimated profits are *$5 to $10 billion*. The land speculators and developers do not bear the cost of building flood control structures nor the cost of emergency disaster relief and recovery. Taxpayers are responsible for this financial burden. When will the costs be placed upon those responsible and not passed on to others?

CONCLUSION

The National Performance Review offers the opportunity to ask tough questions and to take corrective action. Federal public policy should not encourage increasing the number of people and buildings at risk of deep flooding. The Natomas Basin is a prime example of Federal policy gone wrong. Encouraging further urban development in deep floodplains is bad public policy. The Great Flood of 1993 shows the folly of continuing business as usual. Saying "it has always been done this way" is no excuse for continuing the practice. Now is the time to make fundamental changes.

APPENDIX A

PROPOSED LEGISLATIVE SOLUTION

Federal Government actions are encouraging urban development in Natomas Basin. This is the same type of problem Congress faced when it enacted the Coastal Barrier Resources Act (COBRA). Adopted in October 1982, COBRA was enacted to restrict Federal Government actions that were encouraging the development of certain coastal barrier areas.

The essential provisions of COBRA are:

1. Prohibits the National Flood Insurance Program from providing flood insurance protection for buildings built after October 1, 1983, in designated undeveloped coastal barriers.
2. Limits financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as emergency assistance actions essential to saving lives, protecting property, and protecting public health and safety. Such emergency assistance would not include disaster assistance and government loans.

While COBRA limits the availability of flood insurance and limits financial assistance by Federal agencies, it does not prevent private financing and development. The inability of the property owner to purchase flood insurance does not require a lender to refrain from making a conventional loan. The decision and risk remain with the property owner and the lender.[1]

These same COBRA restrictions should be enacted by Congress for deep floodplains, like Natomas Basin. Doing so will greatly restrict new development and alter the type of development undertaken in the Natomas Basin. Existing buildings would be grandfathered and allowed to continue receiving flood insurance and Federal financial assistance.

Based upon the characteristics of Natomas Basin, five (5) criteria should be used to define deep floodplains subject to COBRA-type restrictions:

1. Damage from potential flood events will cause destruction of structures and contents to be 50 percent or greater of their value regardless of the flooding frequency or probability.
2. Depth of flooding is over five (5) feet for all potential flood events regardless of the frequency of flooding.
3. Duration of flooding is over five (5) days for all potential flood events regardless of the frequency of flooding.
4. Amount of undeveloped land in project area located in floodplain exceeds 5 percent of the project land area.
5. Potential risk to public health and safety is increased even after flood control measures are implemented.

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[1] Federal Emergency Management Agency, *Mandatory Purchase of Flood Insurance Guidelines*, FEMA 186, Effective on July 13, 1989, page 24.

APPENDIX B

GREAT FLOOD OF 1993: The numbers are as of Friday, August 6, 1993. The information and numbers used are taken from The Sacramento Bee, August 8, 1993, p. A8, except where another source is noted.

[A] Newsweek, July 26, 1993, p. 22 .

As of August 6, 1993	Deaths (actual)	Homes Damaged (estimated)	Estimated Property Damage (billion)	Estimated Crop Damage (billion)	State Total Estimated Damages (billion)	Square Miles Flooded	Total Number States Flooded
Illinois	4		$0.930	$0.565	$1.495		
Iowa	5		1.250	1.150	2.400		
Kansas	1		[A] 2.000	0.434	2.434		
Minnesota	4		0.018	0.990	1.008		
Missouri	25		1.700	1.100	2.800		
Nebraska	2		0.050	0.292	0.342		
N. Dakota	2		0.100	0.400	0.500		
S. Dakota	3		0.014	0.572	0.586		
Wisconsin	2		0.121	0.800	0.921		
TOTAL	48	44,984	$6.183	$6.303	$12.486	31,250	9

Estimated damages range from $12.486 billion to $15 billion. Based upon totals for estimated crop and property damage from the table above, 50/50 split of damage costs to date. Applying 50/50 split to $15 billion gives $7.5 billion each.

"Homes Damaged" is based upon the number of "families affected."

"Square Miles Flooded" is calculated from 20 million acres divided by 640 acres/sq. mile equals 31,250 sq. miles.

FUTURE NATOMAS BASIN:

Deaths: Estimated deaths were derived from data in Corps Feasibility Report, Main Report, p. III-18 and Appendix C, Table III-3, p. 14. Estimated 25 fatalities in Sacramento's population of 366,500 produced a ratio of 1 death per 14,660 people. Applied to an estimated Natomas Basin population of 210,000 yields 15 deaths.

Homes Damaged (estimated): Based upon estimated housing units from:
City of Sacramento: South Natomas Community Plan:

Total Housing Units (buildout):	17,765
Total Population (buildout):	38,147

Source: Population and Housing Data by Community Plan Area, City of Sacramento, Planning and Development Department, March 1991, p. 6.

North Natomas Community Plan:

Total Housing Units (buildout):	33,527
Total Population (buildout):	66,910

Source: Draft Supplement to the 1986 North Natomas Community Plan EIR, City of Sacramento, Planning and Development Department, March 1993, p. 2.0-8.

Sutter County:	Total Housing Units (buildout)	42,362
	Total Population (buildout):	105,056

Source: Technical Appendices to the South Sutter County General Plan Amendment and Draft Environmental Impact Report, Sutter County Planning Department, July 31, 1991, Appendix G "Land Use Calculations by Cells," Part 5.

Total Natomas Basin:	Total Housing Units (buildout):	93,654
	Total Population (buildout):	210,113

Estimated Property Damage (billion): The estimated value of structures and contents is calculated by assuming the 200,000 people will have the same value of structures and contents as the current 31,000 people. So (200,000 divided by 31,000) times $2.351 billion/per 31,000 people equals $15.168 billion. Using the 67 percent flood damage figure for existing structures and contents yields (67% x $15.168 billion = $10.163 billion). Being more conservation using 50 percent damages on $15.168 billion gives $7.584 billion rounded to $8 billion.

Estimated Crop Damage: "The economic evaluation for the Reconnaissance Report, American River Watershed Investigation, January 1988, indicated that the benefits attributable to agricultural crops were less than 1/2 half of 1 percent. As a result, flood damage reduction benefits were not estimated for agricultural crops." Source: Corps Feasibility Report, Appendix C, p. C-20.

COMMENTS OF THE NATIONAL CREDIT UNION ADMINISTRATION

Chairman Sarbanes, Senator D'Amato and Senator Kerry, the National Credit Union Administration welcomes your request to comment on the *National Flood Insurance Reform Act of 1993* ("the Act"). The Act, S. 1405, proposes substantial changes to the *National Flood Insurance Act of 1968* (P.L. 90–448), as amended.

This most recent debate in Congress on reforming NFIP goes back to the early days of the 101st Congress with formal legislative action first occurring in the former House Banking Subcommittee on Policy and Research's markup of H.R. 1236, March 6, 1991. Congressional action has been spurred by what Senator Kerry has characterized as an "unacceptable rate" of participation in NFIP. It is currently estimated that only 2.4 million of the estimated 11 million structures in flood hazard areas are covered by flood insurance. NCUA agrees that this compliance rate of less than 20 percent would seem to compromise a principal intent of P.L. 90–448: reduce total government outlays in instances of disaster relief. In this context, NCUA supports the thrust of S. 1405.

The Act is designed to increase compliance with and therefore participation in the National Flood Insurance Program (NFIP) created by the 1968 legislation. The proposed legislation has three distinct components as suggested by the three principle titles of the Act: Title II, Compliance and Increased Participation; Title III, Ratings and Incentives for Community Floodplain Management Programs; and Title IV, Mitigation of Flood and Erosion Risks.

We will limit our comments to those provisions directly affecting this agency, Federally insured credit unions and their members. These latter provisions are primarily contained in Title II of S. 1405.

The agency does concur with comments made to the subcommittee by the Federal Deposit Insurance Corporation in its receivership capacity with reference to reviewing loans of failed institutions. Similar to the FDIC, it would be extremely difficult for the NCUA to check loans (for flood insurance compliance) of a failed credit union during potentially short interim periods when the agency completes purchase and assumption or other agreements transferring assets. While the Act does not appear to require NCUA to review loans under the aforementioned circumstances, we would support language clarifying this intent.

NCUA'S RULES AND REGULATIONS

As set out in 12 CFR 760, NCUA requires Federally insured credit unions to consult our regulations in this area when these financial cooperatives are going to make, increase, extend or renew a loan secured by improved real property or a mobile home. The credit union member/borrower has to buy flood insurance if the improved real property or the mobile home is or will be located both in a special flood hazard area and in a community participating in the National Flood Insurance Program. The borrower can buy flood insurance from any property insurance agent or broker licensed to business in the State where the property is located.

If a Federally insured credit union determines that the improved real property or mobile home is or will be located in a special flood hazard area, then before a mortgage or any other security agreement is signed, a credit union has to give the borrower written notice of that fact. This notice does not have to be given if the seller or lessor of the property states in writing that he or she has already given the notice to the borrower and the borrower acknowledges such notice.

It has been a long standing policy of NCUA that every Federal credit union is examined each year. Compliance for flood insurance is part of this examination regimen.

This month NCUA completed and sent to all Federally insured credit unions, a reference guide to better assist credit union management, compliance officers, and other internal review personnel whose responsibilities include compliance matters, in ensuring that each credit union has established appropriate internal systems to promote a strong approach to compliance responsibilities. That portion involving flood insurance compliance is attached to these comments.

TITLE II, NATIONAL FLOOD INSURANCE ACT OF 1993

§ 202 of the Act adds a new requirement for lenders in flood hazard areas. It directs NCUA, after consultation and coordination with the Federal Financial Institutions Examination Council (FFIEC), to issue a regulation providing that if a Federally insured credit union requires the escrowing of taxes, insurance premiums, fees, or any other charges for loans secured by residential real estate, it also escrow all charges for flood insurance. § 202 provides that escrow accounts used to collect flood insurance charges are subject to § 10 of the Real Estate Settlement Procedures Act, which limits required advance deposits in escrow accounts and provides for statements regarding such accounts. This provision would apply to any loan made, increased, extended, or renewed from one year after enactment.

§203 of the Act would direct NCUA, after consultation with the FFIEC, to issue a regulation requiring a Federally insured credit union to issue a notice that informs the borrower both of flood hazards and of the need to purchase and maintain flood insurance. Current flood insurance law directs NCUA to issue a regulation requiring a Federally insured credit union, as a condition of making a loan secured by property in a flood hazard area, to notify the purchaser (or obtain satisfactory assurance that the seller has notified the purchaser) of such hazards. The new (model) notice requirement would be established by the Director of the Federal Emergency Management Agency.

§204 provides that if, at any time during the term of a loan secured by property located in a flood hazard area, a Federally insured credit union determines that the property is not covered by flood insurance in the required amount, the credit union must notify the borrower that the borrower must obtain such insurance at his or her expense. §204 further provides that if the borrower fails to purchase insurance within 60 days of receiving the notification, the credit union must purchase it on behalf of the borrower and may charge the borrower for the cost of premiums and fees. §204 is applicable upon enactment.

In addition to the "forced placement" requirement of §204, it should be noted that the provision would require a credit union to ensure, even when it purchases a loan secured by property in a flood hazard area, that the property is covered by flood insurance. Current law does not extend to purchased loans.

§205 instructs the Director of FEMA to consult regulatory agencies, including NCUA, to develop a standard flood hazard determination form for use in connection with loans secured by property located in flood hazard areas.

§207 authorizes NCUA to assess a penalty against credit unions found to have a pattern or practice of violating the flood insurance requirements. A penalty may be assessed only after notice and an opportunity for a hearing on the record. Under this subsection, NCUA may assess a civil money penalty of not more than $350 per violation with the total amount of penalties per a Federally insured credit union not to exceed $100,000 in any calendar year.

§208 authorizes the FFIEC to consult and assist the regulatory agencies, including NCUA, in developing and coordinating uniform standards and requirements.

It must be noted that the provisions in Title II, particularly §202 and §204, will increase participation in NFIP, but at an increased cost and burden to credit unions, their members and this agency.

Outside Title II of the Act, §601 increases the coverage amounts from $100,000 to $250,000 for single family residences and coverage for non-residential properties increases from $250,000 to $2.4 million. As set out in §501, NCUA would be included in the Flood Insurance Task Force, interagency group called upon to conduct a two year study with recommendations on a wide-ranging set of issues pertinent to NFIP.

CONCLUSION

In recent years NCUA examiners have witnessed first hand the property devastation and human toll wrought by a rash of natural disasters including Hurricanes Andrew and Iniki, and the severe flooding in the Midwest. Our examiners have worked side-by-side with credit unions and others to do whatever is necessary to ensure the safety of credit union staff, keep facilities and operations available to members, and assist credit unions in providing cash and loans as needed by members. NCUA supports measures which provide efficient and meaningful relief to victims of natural disasters. NCUA supports the National Flood Insurance Program as an important (cost saving) mechanism in assisting credit union members and the general public who fall victim to flooding.

Compliance:

A Self-Assessment Guide

National Credit Union Administration

Flood Disaster Protection Act Checklist

	Yes	No
1. Does the credit union offer or extend consumer or business loans (purchase or nonpurchase) that are secured by improved real property or manufactured homes as defined in the provisions of the National Flood Insurance Program, and if yes, does a review of loan records indicate that covered loans are offered or extended in communities with officially designated flood hazard areas (refer to official Federal Emergency Management Agency (FEMA) eligibility list)?		
If yes, complete the following sections.		

Methods of Flood Hazard Determination

	Yes	No
2. Does the review of records indicate the use of a satisfactory method of making flood hazard determinations?		
3. Is a proper method used by branch and subsidiary offices?		
4. If the credit union makes the flood hazard determination (and does not have this function performed by an outside agent through a contract), are current flood maps maintained for all communities in the credit union's lending area?		
5. Does the credit union ensure that flood insurance is provided for any improved real estate or manufactured home that secures a covered loan and is located in a flood hazard area of a community that participates in the National Flood Insurance Program?		

Consumer Notification Procedures

	Yes	No
6. Does a review of forms and procedures indicate that timely, proper written notices are provided in connection with covered loans?		
7. If the credit union does not provide such notification, does it obtain satisfactory written assurances from a seller or lessor that the borrower has been properly notified of the fact that the property is located in a flood hazard area prior to the execution of an agreement?		
8. Are notifications provided within the required time limit?		
9. Prior to closing, does the credit union obtain a satisfactory written acknowledgement from the borrower that the improved property or manufactured home securing the loan is or will be located in a flood hazard area?		

Sufficiency of Coverage

	Yes	No
10. Does a review of files (or procedures) indicate that a sufficient amount of flood insurance coverage is required of loans granted within communities in:		
a. the Emergency Program?		
b. the Regular Program?		
11. Does a review of files (or procedures) indicate that insurance policies are renewed annually?		

Nonparticipating Communities

	Yes	No
12. If the credit union grants federally related loans (loans insured or guaranteed by an agency of the federal government such as FHA, VA, SBA) secured by improved real property or manufactured homes, or unsecured, but made to construct or purchase such property, does it refrain from granting such loans when the property is or will be located in the flood hazard area of a nonparticipating community?		
13. Are proper notices of the unavailability of federal disaster relief assistance (conventional loans only) given to borrowers whose property is located in the flood hazard area of a nonparticipating community?		

Comments ____

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ACSM ▪ ASPRS
American Congress on Surveying and Mapping
American Society for Photogrammetry and Remote Sensing
5410 Grosvenor Lane ▪ Bethesda, MD 20814
ACSM (301) 493-0200 ▪ ASPRS (301) 493-0290

September 29, 1993

The Honorable John F. Kerry
Subcommittee on Housing and Urban Affairs
Senate Committee on Banking, Housing,
and Urban Affairs
Room 535 Dirksen Senate Office Building
Washington, DC 20510

Re: The National Flood Insurance Reform Act of 1993, S. 1405

Dear Senator Kerry:

On behalf of the American Congress on Surveying and Mapping (ACSM) and the American Society for Photogrammetry and Remote Sensing (ASPRS), we would like to commend you and your staff, as well as other Senators involved, for your efforts and craftsmanship in assembling positive reforms to our nation's flood insurance program as outlined in S. 1405.

We appreciate the opportunity to comment on this legislation and respectfully request that our written statement be placed in the subcommittee hearing record of September 14-15, 1993.

ACSM and ASPRS are national professional, scientific and technical associations with a combined membership of nearly 15,000 individuals. The associations are dedicated to advancing knowledge and improving understanding of the surveying and mapping sciences. Our members are employed in the public, private and academic sectors and engage in surveying, cartography, geodesy, photogrammetry, remote sensing and geographic information systems technologies.

Due to our members technical knowledge and expertise in the mapping sciences and with public spatial databases, the majority of our comments will focus on issues related to the quality of the Federal Insurance Administration's flood insurance rate maps (FIRMS). Professional surveyors are the only professionals authorized to complete Federal Emergency Management Agency (FEMA) flood elevation certificates submitted to flood insurance companies. In addition, surveyors are the primary professionals consulted on technical matters related to FIRMS. Based upon our members' familiarity and involvement with FEMA flood elevation certificates and interpretation of FIRMS, we offer our thoughts and suggestions on S. 1405, the National Flood Insurance Reform Act of 1993.

Title II, Section 205. Standard Flood Hazard Determination Forms

Subsection (b) Design and Contents, calls for the map number to be used on the determination form. We suggest this be revised to community number or map number, to allow for whichever is appropriate. Our rationale is based on ongoing FEMA activities, for example: FEMA's new consolidation of whole communities onto a single map where the communities retain their identification number while consolidation of portions of communities in special areas, e.g. Hackensack, Meadowlands, are assigned new map numbers. Our recommendation would take into account these two general possibilities.

Subsection (d) Guarantees Regarding Information, requires that third parties providing information on a determination form guarantee the accuracy of the information. While we believe this concept is laudable, we would like to express our concern that the guarantee of accuracy can only be as good as the quality of the FEMA map given to the third party to interpret. As you know, the surveying and mapping profession has noted many deficiencies and errors with FIA FIRMS. The base maps (FIRMS) used to make flood determinations are not currently drawn to uniform map accuracy standards. This increases the chance of incorrect decisions on questionable determinations.

When a flood hazard determination on a property is questionable on the FIRM, we believe the prudent method for determining the flood hazard boundary in relation to a property is to engage the services of a registered surveyor to make the determination in the field.

With respect to subsection (e) Reliance on Previous Determination, we recommend that it be eliminated. This section does not account for physical map changes or letters of map correction which may have been issued since the prior determination. The flood hazard status of a site could change. In addition, if the first determination had been corrected or revised at some time, there is no way to ensure that the second version is the version relied upon in a later examination of a file. For this reason, a new determination should be made each time.

Title V, Section 501, Flood Insurance Interagency Task Force

Subsection (b) Membership calls for the establishment of an interagency task force to be known as the Flood Insurance Task Force with representation from 11 heads of relevant Federal agencies and commissions. We strongly support the formulation of such a task force and recommend that the "designees" of those agency heads be individuals who possess the qualifications and demonstrated knowledge and competence concerning the National Flood Insurance Program. This would serve to make the Task Force truly effective.

Title IV, Section 604, Updating of Flood Insurance Maps and Identification of Erosion Hazard Areas

Subsection (e)(2) relates to cost sharing or in-kind services of not less than 50% for a state or community that requests revision or updating of its flood insurance rate map. We believe that 50% may be excessive for some communities having small tax bases, particularly rural, and those with no industry. You may wish to allow some flexibility with the 50% to take into consideration such variations.

The legislation is vague as to whether maps provided free of charge to State coordinating agencies and community representatives participating in NFIP could be sold on a cost recovery basis by those parties. Clarification of this matter would greatly assist states and communities.

Subsection (g) Notification, requiring publication of map change or revisions no later than 30 days after the revision is made, should greatly assist interested parties who need the information. We are particularly pleased that you provided two options--notice in the Federal Register or other comparable method. While notice in the register is beneficial to some, many users of maps do not access the Federal Register on a regular basis. One alternative to the register notice would be to provide map changes to the State agencies responsible for coordination of the NFIP. As to "obtaining" copies of changes and revisions, this process should be centralized from FEMA. We understand that local agencies are often reluctant, or in some cases refuse, to distribute such information.

As the evolution to digital mapping occurs whereby users access a digital version of the maps, dissemination of changes need to occur electronically through an electronic bulletin board system. This system would be used to post notices of changes for users to read on their computers. FEMA could send the map change information electronically to the State coordinating agencies or broadcast the information through the bulletin board mechanism directly to all users.

Relative to the requirement that erosion hazard areas be identified and legibly demarcated on the Flood Insurance Rate Maps, we have some serious concerns. Those concerns lie not with erosion hazard areas being identified but with the same FIRM base maps being used to superimpose the new data on erosion hazards. As previously stated, these maps contain errors and do not necessarily conform to map accuracy standards. Instead of remedying the situation of erosion hazard identification, we would be creating additional problems by adding one more layer of confusion upon base maps already known to be deficient. Our recommendation is that new mapping data on erosion hazard areas be quality-controlled, standardized and added only to maps that are updated to meet certain specifications.

Section 605. Technical Mapping Advisory Council

We are most supportive of this new provision calling for a Technical Mapping Advisory Council. The essence of the NFIP depends upon accurate identification and depiction of flood hazard areas on maps for insurance, mitigation and management purposes. ACSM and ASPRS would be most interested in lending its members' technical expertise to assist with mapping questions on accuracy, standards, and other issues related to the flood insurance rate maps. We applaud your insight and persistence in seeking a solution to the underlying problems with the flood insurance rate maps.

On the issue of Council representation, we understand the relevance of organizations such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and that of a regulated lending institution to the NFIP, but it is unclear what role these groups are intended to play on a technical mapping committee. Is this for liaison purposes or would these groups have members that would meet the qualifications criteria stated in your bill? If the representation is mainly for liaison, these organizations might be better situated on the interagency task force described in Section 501.

The addition of Section 605 strengthens the bill. We are pleased that the qualifications section addressed the need for familiarity with the digital side of the mapping process, that is knowledge of remote sensing and geographic information systems. We also agree with the suggested involvement of the Federal Geographic Data Committee (FGDC) in a coordination role. This will help ensure that an eventual digital version of the flood insurance rate maps will be in line with other efforts at the Federal level.

We appreciate the opportunity to provide our views on mapping related aspects contained in S. 1405, the National Flood Insurance Reform Act of 1993. Should you or your staff need additional information, please contact Nancy Parke, ACSM/ASPRS Government Affairs Director at 301/493-0200.

Sincerely,

Richard E. Dahlberg
Richard E. Dahlberg
President, ACSM

Stanley A. Morain
Stanley A. Morain
Immediate Past President, ASPRS

COMMENTS OF JAY D. HAIR

PRESIDENT, THE NATIONAL WILDLIFE FEDERATION

Dear Senator, I urge you to co-sponsor S. 1405, recently introduced by Senator John Kerry of Massachusetts, to reform the National Flood Insurance Program (NFIP). The broad reform of the NFIP proposed by this bill will benefit Americans who directly depend on healthy riverine and coastal ecosystems, and taxpayers by reducing the costs and risks of flood damage.

The recent Mississippi River flooding and enormous losses experienced by Midwest residents underscores current weaknesses in the NFIP. Despite the availability of Federal flood insurance and NFIP requirements in many cases for property to be insured, only a small portion of residences and businesses have coverage. In other instances, insured properties that have suffered repeated past flooding were flooded yet again without efforts in the interim to reduce damage risk. In addition, some communities have allowed construction of new buildings in floodprone areas that fail to meet current NFIP standards aimed at reducing flood damage risk. As a result of such failures, the cost of flooding borne by taxpayers (especially through disaster relief and casualty loss deductions) is greatly increased.

Congress established the National Flood Insurance Program in 1968 with two purposes: to make otherwise unobtainable flood insurance available for existing flood-prone buildings; and to reduce the potential for flood damage by, among other things, encouraging communities to guide new development away from the water's edge. Unfortunately, as described by South Carolina Coastal Council Director Wayne Beam, rather than guide people away from flood-prone shorelines, currently, the NFIP "invite[s] them to move closer."

S. 1405 will remove the Federal invitation to build too close to eroding shorelines by making new Federal flood insurance policies unavailable for new development in coastal erosion hazard areas. Furthermore, through a program-funded "mitigation" program, S. 1405 helps States and communities reduce the potential for flood damage to existing buildings, especially repetitive loss properties, through a variety of activities. This includes the protection of natural areas.

S. 1405 will also authorize several critically important measures to improve participation levels and the financial condition of the NFIP. The Federal Insurance Administration recently reported that the NFIP Fund is operating with an $18 million deficit, with claims from a number of major storms yet to be paid and without considering unfiled claims from recent Midwest floods. Such deficits in the past have ultimately fallen on the U.S. taxpayer for repayments.

I have enclosed a recent article entitled, "Sweet Tradition" (*National Wildlife*, April/May, 1993), which discusses how availability of Federal flood insurance for development in sensitive coastal areas has contributed to loss of important sweetgrass beds necessary for one of the "oldest and most continuous African-American folk art forms in this country."

As you examine ways in which to reduce Federal expenditures, I encourage you to co-sponsor S. 1405 for its benefits to the American taxpayer and the Nation's natural ecosystems that support people and wildlife.

COMMENTS OF GILBERT F. WHITE

DISTINGUISHED PROFESSOR EMERITUS OF GEOGRAPHY

INTERIM DIRECTOR, NATURAL HAZARDS RESEARCH AND APPLICATIONS INFORMATION CENTER

The improvements in Federal flood insurance policy and procedure specified in S. 1405 are a welcome and long-overdue step toward enabling the United States to pursue a genuinely constructive program to assure economically and socially sound use of floodplains. Against the background of involvement for more than 50 years in studying flood problems, I offer two major observations on the approach which the reformed policy should take if its aims are to be realized in practice. Those observations relate to broad national policy and to testing the proposed measures. I can provide more detail if you wish.

My own concern with flood problems began with studies of water management in the Mississippi Basin in 1934 as a staff member of the Mississippi Valley Committee on the Public Works Administration. It continued as Secretary of the Land and Water Committees of the National Resources Planning Board and National Resources Committee, and as a Member of the Bureau of the Budget in the Executive Office of the President, 1935–1942. Observations in those activities led to a monograph on *Human Adjustment to Floods*, published by the University of Chicago in 1942.

I later served as Vice-Chair of President Truman's Water Resources Policy Commission, and as Chair of the Bureau of the Budget Task Force on Federal Flood Control Policy that in its 1966 report (House Document 465) recommended the study of the feasibility of a Federal flood insurance program, and to President Johnson's Executive Order on activities by Federal agencies in locating installations and disposing of lands in floodplains.

During the past 25 years I have had occasion to appraise various Federal, State, and local programs dealing with floods, most recently in reviewing the report of the Federal Interagency Task Force on assessment of *Floodplain Management in the United States*, 1992, and in helping prepare an accompanying non-Federal review entitled *Action Agenda for Managing the Nation's Floodplains*, 1992.

1. It is painfully evident that unless Federal support of flood insurance is approached as an integral component of floodplain management it may be ineffective or even counter-productive. When the emphasis is primarily upon selling insurance policies the effect may be to encourage publicly unwise use of floodplains and to lose opportunities to nourish sound action at the local level. Unhappily, this has been the record in many floodplains in the United States. The record of damages, insurance coverage, and Federal relief expenditures is available. The objectives stated in Section 1302(c) of the National Flood Insurance Act of 1968 that "a flood insurance program should be integrally related to a unified national program for floodplain management" and that "the President should transmit to Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection" still have not been achieved.

As indicated in the *Assessment* report, the Federal agencies involved in supporting the essential work of local and State agencies need to be directed to coordinate their activities in close cooperation with the Federal Insurance Administration. I was struck at the meeting of the Write Your Own insurance companies personnel last March that only a handful of those present were aware of the findings and ideas in the *Assessment* report, and of how they might collaborate. This requires not only the improvements in policy specified in S. 1405, such as requirements for lending agencies, but solid support from FEMA for the work of State agencies assisting local communities in designing suitable floodplain management programs, including public health and safety, economic land use, and natural values.

2. The early days of the flood insurance program demonstrate that a well-intentioned commitment to promptly make insurance available in all the Nation's floodplains led to the establishment of uniform policies that were unsuitable in numerous environments and that, once prescribed nationally, were difficult to change and sometimes self-defeating. This was the case with mapping and classification of hazardous areas.

S. 1405 seeks to correct many of those errors, but it runs the same danger as the earlier administration. It could again, in seeking to rapidly improve matters, freeze into national procedures a number of criteria and methods that will prove unwise.

There are two linked directives that the Congress might give the Federal Insurance Administration to minimize that danger:

a. Prescribe that the new procedures be tried in diverse sample areas for a year or two before extended to the Nation.

b. Request that the Administration report in that connection the observed effects of such procedures on the use and quality of the area affected.

It is not enough to report the numbers of policies sold and the claims settled: the key question is what appears to be the consequence for the community's and the Nation's vulnerability to flood loss, the accompanying economic gains if any, and the quality of its social and natural environment. What, for example, is the effect of new erosion hazard identification upon the volume of insured property and of property liable to damage requiring Federal relief assistance?

While the bill recognizes the importance of natural and beneficial functions of floodplains it gives almost no guidance as to how those are to be appraised. The kind of request for report on observed effects noted above would help sharpen that dimension.

In that connection, it should be noted that while the bill gives encouragement to the Community Rating System, and while a considerable number of communities have been rated by the specified criteria, there is not yet available a thorough, impartial evaluation of what has happened in terms of use and natural functions in communities that have been rated. Based on previous experience, it would seem prudent for the Congress to request that the Administration take the time to find out in some detail the consequences of those activities before or while proceeding more widely.

A similar problem occurs with respect to how increased cost of construction will be handled in terms of ways in which the victims use the coverage to floodproof their structures.

To summarize: the bill is very much in a needed direction, and its provisions seem on the whole wise, but it could benefit from two major lessons from the past 25 years. Don't forget that the primary aim is promoting beneficial use of floodplains; selling insurance is only one possible aid. Don't rush into new inflexible national programs without testing them in terms of operating methods and results. Let the agencies and the overseeing units in the Congress take the time and trouble to do the job right.

COMMENTS OF ALFRED POLLARD

DIRECTOR, GOVERNMENT RELATIONS

SAVINGS & COMMUNITY BANKERS OF AMERICA

Dear Mr. Chairman, Savings & Community Bankers of America welcomes the opportunity to express our opinions regarding S. 1405, the National Flood Insurance Reform Act of 1993 introduced by Senator John Kerry. SCBA is a national trade association representing over 1,800 community-based savings and loan associations and savings banks domiciled in all fifty States.

The National Flood Insurance Program, authorized in 1968, has not succeeded in meeting its goal of reducing the Federal Government's risk of loss associated with flooding disasters. The program has not fully achieved its potential for many reasons including the unavailability of accurate flood area maps and the lack of participation in the program by homeowners and businesses located in flood hazard areas.

Further evidence of the inadequate reach of the program has been discovered by recent congressional studies that revealed that only 2.4 million out of approximately 11 million households in flood hazard areas have actually purchased flood insurance.

Mortgage lenders are caught in the middle of the issue by their mandate to require borrowers with property located in flood-prone areas to purchase flood insurance. However, it is important to note that approximately 50 percent of the owners of the property in these areas are not required to purchase flood insurance because their property is not mortgaged. Many of the owners of mortgage free property located in flood-prone areas take advantage of the jurisdictional safe harbor that removes them from the reach of the program's only compliance enforcers—mortgage lenders. Until the issue of non-mortgaged property owners in flood hazard areas is adequately addressed, there cannot be full compliance and participation in the flood insurance program. This in turn will continue to expose the Federal Government to enormous potential losses.

SCBA and its membership recognizes the need to increase compliance and has worked closely with Senator Kerry and FEMA over the years in trying to develop effective solutions to the problems of the flood insurance program. SCBA supports efforts to reform the flood insurance program as embodied in S. 1405 and wants to continue to work to address those sections of the bill that need further refinement to make it more effective from the standpoint of mortgage lenders who are the program's compliance checkpoint.

Regulators should have the responsibility of monitoring lender compliance with the program. Requiring Fannie Mae and Freddie Mac, with oversight from their new regulator, the Office of Federal Housing Enterprise Oversight, to check for compliance for loans sold in the secondary market is an efficient and accurate method for monitoring the compliance activity of nondepository institutions, and provides additional monitoring for depository institutions that do business with the two agencies.

SCBA favors the bill's requirement that FEMA publish in the *Federal Register* on a semi-annual basis all changes and revisions to flood insurance maps. This requirement will greatly reduce the confusion mortgage lenders currently experience when conducting flood hazard area determinations to assess the need to require the purchase of insurance. The required mapping could facilitate the provision of computerized geocoding by private sector software.

The requirement of S. 1405 that lenders escrow for flood insurance if an escrow account is already required for other purposes should provide greater control over the premium payments by borrowers and create little burden if any on lenders. Appropriate language under HUD escrow regulations to permit this practice would be necessary.

Granting mortgage lenders the authority to "force-place" flood insurance any time during the life of the loan if the property is determined to be in a flood-prone area is another positive step toward increasing compliance. The ability of lenders to actually purchase insurance on behalf of borrowers who refuse to purchase the insurance themselves should provide lenders with the extra tool necessary to conform their portfolio to flood area map changes made available by FEMA and further reduce the Federal Government's risk of loss in cases of flood disasters. However, requiring lenders to notify borrowers of the need to "force-place" flood insurance should be revised to require Fannie Mae, Freddie Mac or any other entity that has purchased loans from the originating mortgage lender to accept the notification responsibility. Servicing fees paid to lenders by secondary market agencies do not cover the costs associated with notification and therefore this notification requirement and any subsequent costs should be placed with the entity with ultimate exposure in case of a flood disaster. These secondary market investors will, in all likelihood, revise their servicing agreement to include this service, but the negotiating position of the originator/servicer will be enhanced if the formal responsibility is on the owner of the mortgage.

SCBA favors the requirement that FEMA along with Federal regulators develop a standard flood hazard determination form for use in originating loans secured by property in flood hazard areas. However, language should be added to this section to require regulators to accept comment from financial institutions on the development of this form. It is in the best interest of all parties involved that this standard determination form be developed so it does not become complicated, unnecessarily detailed and create an additional administrative burden on the part of lenders.

SCBA supports the penalties for noncompliance established in the legislation. Civil money penalties for lenders found to have engaged in a "pattern of practice" of violations pertaining to flood insurance is basically reasonable. The requirement that such a "pattern of practice" be determined before a violation and penalty is assessed should be sufficient to prevent the levying of penalties on institutions where an unintentional error occurred during efforts to comply with the National Flood Insurance Program. The requirement granting regulators the authority to take remedial action if deficient lenders have not demonstrated measurable improvement in compliance is also reasonable.

SCBA again wants to state its support for S. 1405 and efforts to reform the National Flood Insurance Program. While this legislation and its reforms are positive, no lender-based program can ever achieve 100 percent compliance and ensure participation in the program by all property owners. SCBA hopes consideration will be given to our suggestions for refinement of S. 1405 and pledges to continue to work with the committee to develop more comprehensive approaches, such as integration with the property tax system, for increasing compliance in the flood insurance program.

Thank you very much for considering us to submit our views and opinions on this legislation. For further information, please contact me or Bruce Crain at (202) 857–3121.

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October 27, 1993

Donald W. Riegle, Jr., Chairman
United States Senate Committee
on Banking, Housing and Urban Affairs
Washington, D.C. 20510-0076

Re: S.1405, the Flood Insurance Reform Act

Dear Chairman Riegle:

I recently received a copy of three questions submitted by your committee at the request of Senator Mack to Kathleen McCauley, Marshfield, MA, regarding S.1405, the Flood Insurance Reform Act. The questions were raised pursuant to several conversations I had with Senator Mack's office, and I would like to take the liberty of answering them from my perspective, which is similar to Ms. McCauley's.

"Q.1." What do you think the impact of mapping erosion zones will be on property values?

"A.1." The impact of mapping erosion zones on property values has not been considered in the introduction of the legislation. An economic impact study should be done before the legislation is enacted to ensure that, on balance, the economic health of the entire coastal zone is not harmed. The reduction in property values which may occur should be assessed, and a full examination of the legislation's impact on the solvency of the National Flood Insurance Program should be undertaken.

I'm attaching a transcribed copy of a series of questions submitted by your committee to the Federal Emergency Management Agency on the possible impact of this legislation. FEMA's answers are detailed and enlightening, and I would ask you to take particular note of 8b at the top of page 5.

FEMA estimates huge premium increases, up to 750%, for structures that were built in conformance with FEMA elevation and construction requirements. Note the increase in average premium for $60,000 in coverage from $560 to as much as $3,880, with even higher increases for post-FIRM, non-conforming (older, lower elevated) structures.

In my opinion, the impact of this legislation on coastal property owners will be extremely negative, and the truly unfortunate thing about it is that it will have virtually no effect toward "reforming" or maintaining the solvency of the program. Indeed, it will drain the program's reserves for an unnecessary mapping program and an unfocused mitigation program, both of which will provide no measurable benefit to the NFIP.

Kenneth J. Smith
President

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"Q.2." What is there under the current program, and under S.1405, that will ensure that there will be regular remapping when there is accretion, as opposed to erosion? Am I correct to assume that when accretion is discovered landowners will be given the benefit of this information through perhaps being reclassified as outside an erosion zone, or being given a decrease in their erosion related premiums?

"A.2." There is no provision under the current program, nor under S.1405 to ensure there will be regular remapping when there is accretion, as opposed to erosion. There is an accreditation of community erosion control measures, but no regular revision for natural accretion. I do not think there is enough money in the legislation to do the initial erosion hazard area mapping, let alone revisions to the maps.

Regarding the revision of erosion hazard areas: under Section 604 (b)(7)(A) the Director of FEMA "shall give special consideration to areas ... that are experiencing or have recently experienced erosion rates in excess of the erosion rate established ... due to storms, high lake levels, or other extraordinary events creating a dynamic change in the local erosion rate."

In other words, post-storm erosion will be revised, but natural beach recoveries will not. The only provision is for significant alterations which are man induced.

The legislation has been proposed as a motivating force for communities to manage and control erosion. That's good, but the downside is the severe devaluation of properties through reduced marketability caused by astronomic premium increases. As the FEMA report notes, the increases will be extreme even for structures which were built in conformance with program standards.

Individual property owners can utilize an appeal process to reclassify their designation, based on accretion, but it will involve time, expense and no guarantees. If they can prove they are not in an erosion hazard area, the normal premium charges would apply, though there may still be loadings for mitigation coverage. Question 3. has further relevance to this.

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"Q.3." How do you predict erosion without a fixed baseline reference feature? My understanding is that the measuring stick for where these erosion zones will be located could be a movable thing like a dune crest or vegetation line. Even if you average the amount of movement, you still have uncertainty. How can a property owner know with any degree of certainty how to conduct his affairs if it's possible that he may be classified and reclassified every six months?

"A.3." He can't. This question goes to the heart of the problem with erosion hazard zone mapping. To retain fairness and accuracy in the proposed erosion hazard mapping, FEMA would have to revise the reference feature after significant storms, and revise it again after significant post-storm recovery has taken place. The problem is that to do it right would cost exorbitant amounts of money, and it would still not remove the uncertainty, because it would consistently be non-concurrent.

The extreme variations in premium rates from erosion hazard zones tu non-erosion zones would result in a logistical (and probably litigious) nightmare for owners, lenders, insurance agents and FEMA. There is not nearly enough money to classify and reclassify properties based on a moving, revisable reference feature. And it is totally unnecessary.

One cannot predict erosion even with a fixed reference feature, but at least with a fixed reference feature one can measure actual erosion, and that is the direction in which we should be heading. As Senator Kerry rightly noted, regarding eroding areas "you gotta do something!" We agree, and we would like to apply a fixed reference feature to the problem of measuring risk in the coastal zone.

With a fixed reference feature there is no need to spend millions of dollars on mapping and revising projected erosion hazard zones. With a fixed reference feature we basically draw a "line in the sand", with a provision for certain risk rating factors, premium increases or coverage eligibility criteria if that line is breached. It should be breached consistently over a period of time, to discount the episodic events and allow for post-storm recovery or community erosion control measures to be carried out.

Under the NFIP, coverage is not available for buildings wholly or partially constructed over water. I might add that, if a community allows the situation to get that bad, flood insurance will be one of the least of their problems. A fixed reference feature does not need to be revised, obviously since there is nothing to revise.

Senator Mack's questions regarding S.1405 Page 4.

"Q.3." continued.

The feature could be a bulkhead, revetment, or a line struck from a fixed landward benchmark. As a stationary feature, it would be much less open to challenge than a moving feature (and would probably save more in litigation fees than the entire mapping appropriation).

There must be motivation for communities to manage their erosion. Many are uninformed, even apathetic, and they cannot expect the status quo to be maintained regarding flood insurance payments if their community is experiencing ongoing and unmanaged erosion. BUT: there is a fair way to exact that community action, and there is the convoluted, heavy-handed, non-empirical system engendered by this bill.

I won't get into my views of the reasons for this legislative effort over the last several years, except to say that I question whether NFIP solvency is at the heart of the matter.

We are a developed coast, and as a developed coast we provide value which can be measured economically and sociologically. That value can be assessed macro or micro: we all know it's there. In enacting legislation that affects the coastal economy we should keep the big picture in mind of the tremendous value of the coast, and support measures that enhance rather than threaten that value.

FEMA's own statistics show that the Coastal High Hazard Areas (V-Zones) have not developed huge underwriting losses, quite the contrary. But the exposure is there. Indeed, that's why it's difficult to set actuarial rates for V-Zones: a high exposure but a low incidence of claims. The argument for the catastrophic loss is always there. When the "big one" hits there's going to be a huge payout. But if we're going to examine costs, we need to examine benefits.

The program's losses, when compared to the revenues generated by the system which the program "subsidizes" are a pittance. We are going to pay disaster assistance anyway, so isn't it better to do it through a prefunded insurance based program? Of course it is. Can we do better risk management? We already are, and FEMA conforming structures have reduced their flood damage claims by 83%.

I've answered Senator Mack's questions as briefly and concisely as I can, and I would be happy to expand on any of the answers if you wish. I suppose the question is if, after all the work and all the movement over the years to set up an erosion mapping program, we don't do it, what should we do to keep the program healthy? Here are a couple suggestions.

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Suggestions for continued solvency of the National Flood Insurance Program

1. Increased participation: It's the prime solution to the NFIP's funding problems. We simply have to bring more ratepayers into the program. I, and many of my colleagues, would like to see legislation enacted that requires all structures in Special Flood Hazard Areas to be insured under the program, whether they have a Federally insured loan or not. This may be a leap in constitutionality, but keep in mind that auto liability insurance is mandatory in most states. More ratepayers could result in lower premiums overall, through a larger risk pool.

2. Coinsurance provisions: Most property insurance policies have coinsurance requirements, usually that the structure be insured to 80% of its replacement cost or actual cash value. By requiring sufficient insurance to value, rates are stabilized and better actuarialized. Under the NFIP, insurance is only required to cover the amount of an existing loan on the property.

For example, on most homeowners policies a home worth $100,000 must be insured to at least $80,000 in order to collect the full claim payment on a partial loss (which is what most losses are). But if that owner has a $10,000 note, he is only required to buy $10,000 worth of flood insurance, and if he suffers any flood damage up to $10,000, he'll get the full claim payment.

Coinsurance would bring more premium dollars into the program, and also may lower, or at least stabilize rates.

3. Instead of a mitigation grant program, an Increased Cost of Construction coverage should be added to the Standard Flood Insurance Policy. This would provide for the cost of bringing a structure into conformance with program requirements after a certain threshold of claims payments has been reached (I suggested 25%, but FIA has discussed 50%: OK).

The threshold would allow for a phasing in of the coverage, and it would be based on experience, not projections. By paying the cost of conformance it would reduce future risk for the program, and assist thousands of owners of repetitively flooded structures to break the cycle of damage and repair. Many of those owners are not rich: indeed, many of them are "house poor" people, often senior citizens who would like to get out of harm's way but cannot afford to. We can't just tell them to relocate; it's not as simple as that.

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Suggestions for continued solvency of the National Flood Insurance Program
Continued Page 6.

4. Finally, the 1993 Natural Disaster Protection Act should be passed, and the National Flood Insurance Program should come under its aegis, in short order. The proposed bill, S.1350 and H.R. 2873, is good, effective legislation which would set up a reinsurance mechanism in the U.S. Treasury. The fund would allow us to prefund disaster relief in this country through an insurance system, funded by insurance industry dollars and only accessible to the industry after a significant reduction in their surplus.

It is a minimal, reasonable cushion that the industry needs to return stability to the property insurance market in hazardous areas, which make up more than half of the United States. The inclusion of the NFIP in this program would guarantee stability for the flood insurance fund.

These four measures would greatly increase the stability and solvency of the NFIP, and I would be happy to assist your committee in any way to pursue them. Many thanks to you and your colleagues, Mr. Chairman, for staying on this issue until we get it right.

Ken J Smith

Kenneth J. Smith
President
Coastal Advocate, Inc.
October 27, 1993

Coastal Management Services
Beach Restoration Lobbying

Kenneth J. Smith
President

QUESTIONS AND ANSWERS ABOUT S.1405
THE NATIONAL FLOOD INSURANCE REFORM ACT OF 1993

The following are a series of questions asked by the Senate Banking, Housing and Urban Affairs Committee, and answered by the Federal Insurance Administration/Federal Emergency Management Agency. The questions and answers have been retyped for clarity, and are printed verbatim. They were received by us on 10/11/93.

1. Will S.1405 Make the National Flood Insurance Program Actuarially Sound?

No. As the GAO (General Accounting Office) recently testified, "the National Flood Insurance Program fund is not, nor is it required to be, actuarially sound". 1.

The NFIP was established in 1968 in order to reduce the amount of Federal disaster assistance provided to communities damaged by flooding. The NFIP was designed to accomplish this objective by identifying communities located in a floodplain and by providing affordable flood insurance to residents of communities which agreed to adopt flood protection measures established by the Federal Insurance Administration (which is part of FEMA). The primary flood protection measure was the adoption of building codes that required all new construction to be built above base-flood elevation.

The FIA estimates that there are 31,826 flood prone communities nationwide. At the beginning of 1992, 18,660 communities in every State and U.S. territory were participants in NFIP. 2.

Since 1975, more than 2 million structures have been built in participating communities in accordance with NFIP building standards. These structures are 77% less likely to suffer flood damage than previously built structures and have suffered 83% less damage. FIA has estimated that damage from flooding has been reduced by more than $569 million annually. 3.

Under the NFIP, there is no taxpayer subsidy for insurance covering structures built after December 1974 (called post-FIRM) structures, since they were constructed after the FIA prepared a "Flood Insurance Rate Map, or FIRM"). For all communities, including coastal communities, the insurance rates for structures built after a community has joined the NFIP are at full-risk premium rates. 4. In fact, from 1978 to 1992, premiums paid on post-FIRM structures have exceeded claims paid by almost $591 million. 5. Between 1981 and 1992, premiums paid on post-FIRM structures in coastal communities have exceeded claims paid by $25.9 million. 6.

However, there is a taxpayer subsidy for flood insurance provided for structures that were built before the community joined the NFIP and the floodplains were mapped (called pre-FIRM structures). The subsidy was provided in order to make flood insurance affordable to people who built homes or businesses before the risk of flooding had been identified or measured.

Without this subsidy, there would have been no incentive for communities to join the NFIP since residents would not be able to purchase flood insurance at affordable rates.

The amount of the subsidy provided to pre-FIRM structures is limited to flood insurance coverage of $35,000. Additional coverage must be purchased at actuarial rates. Even with the subsidy, owners of pre-FIRM structures pay higher premiums than those who pay actuarial rates. For example, the average actuarial premium in a special flood hazard area is $232, while the average subsidized premium for those living in the same is $409. 5.

Currently, about 1.7 million of the total 2.6 million structures insured are pre-FIRM, but only 18% of the total coverage under the program is subsidized. From 1978 to 1992, the premium income on pre-FIRM structures has exceeded claims paid by $747 million, but FEMA estimates that actuarial reserves necessary to cover expected losses for those structures will exceed the amount collected in premiums by $667.7 million. 9.

Congress has appropriated $1.2 billion to the NFIP up through 1986. Since then, the FIA has been self-supporting and generating sufficient premium income annually to meet potential claims up to the average historical loss. 10.

Due to the devastating floods in the Midwest, the NFIP estimates a current deficit of $85 million dollars but expects sufficient premium income to pay anticipated claims without having to borrow funds from the Treasury.

While S.1405 makes some significant changes to the NFIP, the basic financial structure of the NFIP will not change. Although the NFIP is not actuarially sound, experience with the program indicates that it has saved the federal government money by reducing damage due to flooding and requiring homeowners and businesses who are at risk of flooding to pre-pay in insurance premiums part (and for structures built after 1974, to pay all) of the cost of receiving federal protection from flood damage.

2. Will S.1405 Ensure that All People Living in Floodplains are Protected by Flood Insurance?

No. While there is no solid data on the number of structures located in floodplains, FIA estimates (based on census data, surveys and assumptions) that there are between 7.5 million and 8.9 million potential residences eligible for flood insurance in floodplains. 11. Currently, FIA has 2.6 million flood insurance policies outstanding.

There is no requirement that people living in floodplains purchase flood insurance. Since 1973, however, Federally insured depository institutions and certain Federal agencies have been prohibited from making loans secured by property located in special flood hazard areas unless covered by flood insurance.

Title II is designed to increase the number of policyholders through strengthening the existing mandatory flood insurance purchase requirements. Section 202 requires financial institutions and Federal agencies that have mortgage escrow accounts to collect flood insurance premiums from borrowers. Section 203 requires communities participating in the NFIP to notify annually known lenders and property owners of changes in the flood maps. Section 204 expressly authorizes lenders to purchase flood insurance for borrowers who live in special flood hazard areas but have not purchased flood insurance.

While the provisions are intended to increase participation in the NFIP by property owners with mortgages located in special flood hazard areas, it is estimated that as many as 60% of all homeowners do not have a mortgage. 12. Moreover, property owners who live in a floodplain, but are not in a special flood hazard area, are not subject to the mandatory flood insurance requirements.

The FIA believes that increasing the number of policyholders will strengthen the financial condition of the NFIP by increasing premium income and spreading the risk of loss due to flooding over a larger number of participants. However, the GAO testified that if a larger number of pre-FIRM structures are insured, the amount of Federal flood insurance subsidy and the potential liability of the NFIP will increase. 13.

3. Will the Mitigation Assistance Program Improve the Financial Condition of the NFIP?

No. Sections 402 and 403 authorize FEMA to spend flood insurance premiums of up to $46 million between fiscal years 1994 through 1996, and 20 million a year thereafter, for financial matching grants to States and communities for projects that reduce the risk of flooding and erosion. After the project is completed, flood insurance policyholders in those States and communities will be eligible for reduced insurance premiums commensurate with the reduction in flood damage risk under the Community Rating System established in section 301. 14.

Under S. 1405, neither the policyholders whose premiums are used to fund mitigation projects in other States and communities nor the NFIP will benefit financially from this program. While projects funded with insurance premiums will be used to reduce the risk of flooding in certain States and communities, the NFIP will not benefit from the reduction in flood insurance claims because premium income from those States and communities will also be reduced. Consequently, the mitigation grant program will not be cost-beneficial to the NFIP.

5. What is an Erosion Hazard Area?

Erosion hazard areas are defined in section 102(a) to be an area "based on erosion rate information and other historical data, where erosion or avulsion is likely to result in damage to or loss of buildings and infrastructure within a 60 year period".

Once an erosion hazard area has been identified, section 604(b) requires FEMA to identify areas that are subject to erosion hazards within

30 years (a "30-year erosion hazard area") and 60 years (a 60-year erosion hazard area).

6. Do Erosion Hazard Areas Include Communities Along Rivers?

Yes. Section 604(b) requires FEMA to "map all erosion hazard areas within 5 years after the date of enactment".

Since the techniques for mapping erosion in riverine areas are not as well established as mapping coastal erosion, section 407 directs FEMA to conduct a 2 year study of the best way to identify and establish riverine erosion areas.

7. Does FEMA Know Where the Erosion Hazard Areas are Located?

No. FEMA does not know the number or location of communities that will be identified as having erosion hazard areas.

At a minimum, erosion hazard areas will be located in at least 120 communities in 30 States which have previously filed erosion damage claims with the FIA under the so-called Upton-Jones program. 14.

In addition, erosion hazard areas will probably be located in as many as 562 communities in 28 States currently identified as "coastal high hazard areas". 16.

Although erosion does occur along rivers, FEMA has no estimate of the number or location of communities in riverine areas that will be identified as erosion hazard areas.

8. What is the Consequence of Being Identified as an Erosion Hazard Area?

a. No Flood Insurance for New Construction.

Section 406 prohibits FEMA from providing flood insurance coverage for any structure constructed in a 30-year erosion hazard area after the date of enactment of S.1405. FEMA is also prohibited from providing insurance coverage for any "addition" to an existing structure located in a 30-year erosion hazard area. Consequently, if a homeowner adds a new room or extends the size of an existing room, that portion of the home constructed after date of enactment of S.1405 cannot be insured for flood damage.

Section 406 also prohibits FEMA from providing flood insurance coverage for any nonresidential structure constructed or relocated landward of a 30-year erosion hazard area but still within a 60-year erosion hazard after the date of enactment of S.1405. FEMA is also prohibited from providing insurance coverage for any "addition" to an existing structure located within the 60-year erosion hazard area.

A residential structure constructed or relocated after the date of enactment landward of a 30-year erosion hazard area but still within a 60-year erosion hazard can be covered by flood insurance if it is "readily movable" (defined in section 102(a) as a small permanent structure of less than 5,000 square feet that is designed, sited, and built to accomplish relocation at a reasonable cost relative to other structures of the same size and construction and that has access of sufficient width and acceptable grade to permit such relocation).

8b. Substantial Increases in Flood Insurance Premiums for Existing Structures.

Under S.1405, people already living in communities that are subsequently identified as being in an erosion hazard area will have their annual flood insurance premium increased by as much 750%.

FEMA estimates that the average $560 premium for a homeowner (including those living in condominiums) in a post-FIRM structure (i.e., built in accordance with FEMA flood protection standards) located in a coastal community identified as an erosion hazard area with $60,000 of insurance coverage will be subject to a premium increase of up to $3,880 a year.

9. Will Substantial Increases in Premiums for People Living in Erosion Hazard Areas Improve the Financial Condition of the NFIP?

No. As discussed above (question #1), people living in post-FIRM structures located in coastal communities pay actuarial premiums that exceed anticipated claims.

Although the NFIP is not sustaining losses, and is not expected to sustain any losses from providing insurance coverage to post-FIRM structures located in coastal communities, FEMA believes that there is a "cross-subsidy" (not a taxpayer subsidy) among policyholders living in these communities. In other words, people who are living closer to the water are paying too low a premium while people living in the same community but further away from the water are paying too high a premium based on actuarial risk.

Eliminating this "cross-subsidy", however, will not improve the financial condition of the NFIP since the total amount of premiums collected from those living in the coastal community will not change.

10. Will the Prohibition on Insurance Coverage for New Construction in Erosion Hazard Areas Improve the Financial Condition of the NFIP?

No. FEMA opposes section 406 S.1405. FEMA testified that "the strength of the NFIP has always been the leverage in the agreement between participating communities and the Federal government that communities would enforce sound land use management in exchange for the availability of flood insurance".

The denial of insurance could increase the overall cost of providing flood disaster assistance since new construction could occur without having to comply with FEMA flood protection standards resulting in greater flood damage and the NFIP would be denied the financial benefits of receiving flood insurance premium payments.

11. Will the NFIP Recover the Cost of Identifying Erosion Hazard Areas?

Under section 606, FEMA is authorized to spend $25 million of premium income to identify and map erosion hazard areas. However, FEMA has done no analysis to determine whether the NFIP will save at least $25 million as a consequence of identifying erosion hazard areas.

Since identification of erosion hazard areas will be used primarily to eliminate a "cross-subsidy" among policyholders living in coastal communities, it is unclear how the expenditure of these premiums can be cost-beneficial.

12. If the Identification of Erosion Hazard Areas Does Not Improve the Financial Condition of the NFIP, What Purpose Does it Serve?

During the hearing on S.1405, FEMA acknowledged that the objective of identifying, and denying insurance in, erosion hazard is to deter coastal development. FEMA stated that "while insurance denial may seem to be the simplest way to discourage development in these environmentally sensitive areas, we question how effective a deterrent this really is". Instead, FEMA observed that "actuarial premiums charged in these areas, coupled with a stronger mandatory purchase provision will help discourage unwise development". 16.

FEMA initially recommended a short term study "that will examine the impacts of denial of insurance, the application of actuarial rates on development coastal erosion zones and coastal areas, and the requirement to purchase flood insurance at actuarial rates in these areas". However, FEMA subsequently decided not to conduct the study to avoid delay in Senate action on S.1405. 18.

13. What is Mitigation Insurance?

Section 602 authorizes the FIA to provide "mitigation" insurance coverage to pay for the cost of bringing structures (primarily pre-FIRM structures) into compliance with building codes that protect against flooding, i.e., raising the structure above base flood elevation. To be eligible, the structure must be "substantially" damaged (the cost of repair is 50% or more of the value of the structure) or a "repetitive loss structure" (two claims over 10 years which average 25% of the value of the structure).

Based on discussions with FEMA, mitigation insurance will be designed to include a $1,000 deductible and pay up to $25,000 of the cost of bringing a structure into compliance with building codes. If the structure cannot be elevated, FEMA will provide the same coverage for the relocation or demolition of the structure.

14. Do Repetitive Loss Structure Covered by Mitigation Insurance Generate the Largest Losses for the NFIP?

FEMA has not done an analysis of which structures are generating the greatest losses to the fund.

Section 102(a) defines a repetitive loss structure as an "insured property that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each flood event".

A number of witnesses at the hearing on S.1405 suggested that policyholders that file smaller but more frequent claims are causing a greater financial drain on the NFIP. However, those witnesses did not provide information to substantiate this conclusion.

Since FEMA has not provided information to identify which structures cause the greatest losses to the NFIP, it is not possible at this time to evaluate the cost-effectiveness of mitigation insurance coverage.

15. How Much Will Mitigation Insurance Cost?

Based on discussions with FEMA, mitigation insurance coverage will be included in all flood insurance policies.

FEMA expects to increase total premiums by $75 million a year. However, the amount of the premium increase will depend on whether the structure is pre-FIRM or post-FIRM and where the structure is located. 20.

Impact on Post-FIRM Structures

For policyholders living in floodplains that are not in a V-Zone, premiums will go up $3 to $5 a year. Those living in V-Zones that are not in erosion hazard areas will pay an additional $65 a year (a 9% increase in premiums). However, those who built their structures in compliance with FEMA flood protection standards but who live in coastal communities subsequently identified as erosion hazard areas will see an increase in premiums of between $375 and $750 a a year (increases of 54% to 108% over current premiums).

Impact of Pre-FIRM Structures

Premium increases to cover the cost of mitigation insurance will be substantially higher for pre-FIRM structures. For policyholders living in floodplains that are not in a V-Zone, premiums will go up $75 a year (an 18% increase in current premiums). Those living in V-Zones that are not in erosion hazard areas will pay an additional $188 (a 50% increase in current premiums). Those who live in coastal communities subsequently identified as erosion hazard areas will see an increase in premiums of between $375 and $750 a year (increases of 133% to 197% over current premiums).

FOOTNOTES

1. Testimony of Judy A. English-Joseph, General Accounting Office, before the Senate Committee on Banking, Housing and Urban Affairs, September 14, 1993.

2. National Flood Insurance Program Issues, CRS Issue Brief (IB90010), December 14, 1992.

3. Testimony of Francis V. Reilly, Flood Insurance Administration, FEMA, before the House Subcommittee on Consumer Credit and Insurance, June 24, 1993.

4. Testimony of Francis V. Reilly, Flood Insurance Administration, FEMA, before the House Subcommittee on Consumer Credit and Insurance, June 24, 1993.

5. Historical Surplus or Deficit in Flood Insurance Loss Reserves, June 9, 1993. (Attachment 1) Premium income of $1.010 billion exceeded actuarial losses of $418 million by $592 million. Reserves for expected losses $666.80 million exceeded actual losses of $418.90 million resulting in an actuarial surplus of $247.9 million.

6. Coastal High Hazard Zones, Historical Surplus of Deficit in Flood Insurance Loss Reserves, June 22, 1993. (Attachment 2) Premium income of $50.6 million exceeded actuarial loss of $24.7 million by $25.9 million. Reserves for expected losses of $33.4 million exceeded actual losses of $24.7 million resulting in an actuarial surplus of $8.7 million.

7. Section 1806(b) of the National Flood Insurance Act of 1968 (42 U.S.C.§4013(B)).

8. Average Premium 94 Level, Preliminary Actuarial Calculations (Attachment B).

9. Historical Surplus or Deficit in Flood Insurance Loss Reserves, June 22, 1993 (Attachment 1). Premium income of $4, 476 billion exceeded actual loss of $3,729 billion by $747 million. However, actual losses of $3,729 billion exceeded actuarial reserves of $3.061 billion resulting in an actuarial deficit of $667.7 million.

10. Testimony of Francis V. Reilly, Flood Insurance Administration, FEMA, before the House Subcommittee on Consumer Credit and Insurance, June 24, 1993.

11. FIA Memorandum on the Number of Floodprone Structures, August 31, 1993. FEMA was unable to substantiate the "fact" most often cited that there are an estimated 11 million structures located in floodplains. The Donnelley report referred to in the memo is selected survey data purchased by FIA regarding market penetration for flood insurance. The Biennial Report referred to in the memo is information collected every two years from participating communities on estimates of the number of structures in those communities.

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12. Testimony of Kenneth L. Austin, Mortgage Bankers Association of America, before the Senate Committee on Banking, housing and Urban Affairs, September 14, 1993.

13. Testimony of Judy A. English-Joseph, General Accounting Office, before the Senate Committee on Banking, Housing, and Urban Affairs, September 14, 1993.

14. Section 301 of S1405 states that "the credit on premium rates for flood insurance coverage shall be based on the estimated reduction in flood damage risks resulting from the measures adopted by the community under this program".

15. Attachment 4 summarizes information received from FEMA on the number of States and communities that have filed erosion damage claims under the Upton-Jones program (UJ List). A list identifying each of the communities in your member's State is available upon request.

16. Attachment 4 summarizes information received from FEMA on the number of States and communities that been mapped as "coastal high hazard areas" (called V-Zones or velocity zones because flood damage can be caused by waves and wind from a body of water). The list of V-Zones received from FEMA was broken down into 2 groups, DE-zones and E-zones. A list identifying each of the communities in your member's State is available upon request.

17. Preliminary Estimates for Actuarially Rated Building Coverage in V-Zones Including Mitigation Coverage and Consideration of Erosion Risk in Identified Erosion Areas, September 29, 1993 (Attachment 5). In order to determine the total premium, you have to add the "current premium" and the "added (premium) for erosion risk consideration". For example, the total premium for a single family home that is not movable located seaward of the 30-year zone is $20, 450 (the current premium of $2,400 and the "added" premium of $18,050). "Added" premiums listed in the chart are provided in a range depending upon the location of the home within the erosion area.

18. Testimony of James L. Witt, Director, FEMA, before the Senate Committee on Banking, Housing, and Urban Affairs, September 14, 1993.

19. Testimony of James L. Witt, Director, FEMA, before the Senate Committee on Banking, Housing, and Urban Affairs, September 14, 1993.

20. Average Premium 94 Level, Preliminary Actuarial Calculations

(Attachment 3).

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ATTACHMENT 5

Federal Emergency Management Agency
Washington, D.C. 20472

September 29, 1993

PRELIMINARY ESTIMATES FOR ACTUARIALLY RATED BUILDING COVERAGE IN V ZONES INCLUDING MITIGATION COVERAGE AND CONSIDERATION OF EROSION RISK IN IDENTIFIED EROSION AREAS

	Current Average Policyholder (incl. condo units)	Single Family* $100,000	Single Family* $250,000
Current V Zone Premium (baseline)	$560	$1,000	$2,400
Added for Mitigation Coverage			
-Non-Erosion Area	63	110	264
-Erosion Area			
w/Erosion Mgmt.	375	670	1,608
W/o Erosion Mgmt.	750	1,330	3,192
Added for Erosion Risk Consideration			
-Moveable Building			
Seaward 30-Year	1,155	2,150	5,375
Landward 30-Year	0	0	0
-Non Moveable Building			
Seaward 30-Year	1,700 - 3,880	3,170 - 7,220	7,925 - 18,050
Between 60- & 30-Year	1,330 - 1,700	2,470 - 3,170	6,175 - 7,925

*Built in compliance with NFIP requirements and fully insured to value.

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